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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1889.**

No. 361. ~~69~~ 13

THE SINGER MANUFACTURING COMPANY, APPELLANT,

*vs.*

WILLIAM A. WRIGHT, COMPTROLLER GENERAL OF THE STATE OF GEORGIA, AND LOVICK P. THOMAS, SHERIFF OF FULTON COUNTY, GEORGIA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

**FILED AUGUST 1, 1887.**

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, JUNE 17, 1889.

day of December, 1886, passed an act entitled "An act to levy and collect a tax for the support of the State government and the public institutions, to pay the interest of the public debt, and for educational and other purposes herein mentioned, for each of the fiscal years eighteen hundred and eighty-seven and eighteen hundred and eighty-eight, and to prescribe what persons, professions, and property are liable to taxation; to prescribe the method of collecting taxes, and to provide penalties and forfeitures for non-payment of taxes, and for other purposes."

The seventeenth paragraph of the second section reads as follows:

"Upon every sewing machine company selling or dealing in sewing machines, by itself or its agents, in this State, and upon all wholesale dealers in sewing machines, selling sewing machines manufactured by companies that have not paid the tax herein required, two hundred dollars for each fiscal year or fractional part thereof, to be paid to the comptroller general at the time of commencement of business; and, in addition to the above amount, said companies or wholesale dealers shall furnish the comptroller general a list of all agents authorized to sell machines, and shall pay to said comptroller general the sum of ten dollars for each of their agents
4 in each county for each fiscal year or fractional part thereof; and upon the payment of said sum the comptroller general shall issue to each of said agents a certificate of authority to transact business in this State; and all sewing machines belonging to such companies, dealers, or their agents in possession of such companies, dealers, or their agents or others, shall be liable to seizure and sale for the payment of such license fees and tax.

This tax shall be for the whole State, and such companies, their agents, and wholesale dealers shall not be liable for any county tax or license fees by the counties for selling sewing machines therein; and said agents shall be required to register their names with the ordinary and exhibit their license from the comptroller general at the time of registering, and thereafter keep the same posted on their wagons or vehicles or at their place of business. When a company or wholesale dealer transfers an agent from one county to another said company or dealers shall notify the comptroller general in advance of said transfer. In cases where wholesale dealers sell sewing machines manufactured by different companies, such dealers shall pay the license fees and tax above provided for separately for each company whose manufacture of machines may be sold by such dealers, unless each of said companies has itself paid such license
5 fees and tax. Any person who shall violate the provisions of this section shall be liable to indictment for misdemeanor, and, on conviction, shall be fined not more than five hundred dollars and not less than one hundred dollars, in the discretion of the court trying the same. If said fine is not paid within the time prescribed by the court such person so fined shall be imprisoned, as prescribed in section 4310 of the Code."

The first paragraph of the second section of the VII article of the constitution of the State of Georgia contains these words: "All taxation shall be uniform upon the same class of subjects, and ad

valorem on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws." Complainant says that the provision of the act of the Legislature above referred to and set out is violative of and in conflict with this clause of the constitution of the State of Georgia.

The subject which the Legislature is here seeking to tax is the business of selling sewing machines, and complainant say that under the provision of the constitution of said State above quoted said tax must be uniform on all persons engaged in that business—that
6 is, whose business and calling bring them within that class of subjects—whereas the classification set forth in the said seventeenth paragraph above quoted is by persons and not by subjects. Under the said act a greater tax is imposed upon corporations or companies, including complainant, than upon individuals doing the same business.

From an examination of said tax act, in the paragraph above quoted, it appears that individuals dealing in sewing machines by wholesale and corporations or companies dealing in sewing machines, whether at wholesale or retail, are required to pay the State an annual tax of two hundred dollars; and, further, that corporations or companies dealing in sewing machines, either at wholesale or retail, are required to pay also an annual tax of ten dollars each for every agent which they may employ in the State of Georgia in the sewing-machine business, while the retail dealers in sewing machines, who are individuals, are by said act exempt from said two-hundred-dollar tax altogether, and can employ as many agents as they please, and are also by said act exempt from said ten-dollar tax for each of said agents.

Under the operation of this law corporations or companies, including complainant, — retail dealers are required to pay a heavy
7 license tax of ten dollars for each of their agents, while individuals who are retail dealers, following the same business, are required to pay no such license tax for agents at all, and that corporations or companies, including complainant, are required to pay to the State the sum of two hundred dollars for the privilege of doing business in Georgia, whether they are wholesale or retail dealers, while individuals are only required to pay the tax of two hundred dollars if they are wholesale dealers.

Complainant submits that a corporation selling sewing machines is in the same business as an individual selling sewing machines; that where the subject of taxation is the business and the business the same, then the subject is the same. The subject of the tax is the business of selling sewing machines. The clause in the constitution of Georgia above quoted provides that all taxation shall be uniform on the same class of subjects. Here the class is those dealing in the business of selling sewing machines.

Complainant is one of that class and is taxed, while its competitors in the State of Georgia, who are individuals dealing in sewing machines, are others of the same class of subjects and are not taxed.

Complainant says that the discrimination in the law is within

the meaning of said State constitution and violative of the
8 same, as above set forth. The said seventeenth paragraph of the second section of said tax act is null and void, so far as it seeks to impose any such tax upon or seeks to require complainant to pay either said two hundred dollars general license tax or ten dollars for each of its agents, as aforesaid.

Complainant pays its regular taxes on all its property in said State in the same manner and at the same rate as do other persons, and makes *and makes* no objection thereto.

Complainant shows that all the corporations dealing in sewing machines in the State of Georgia are chartered by other States and the stockholders thereof are citizens of other States, while the individuals engaged in the same business are citizens of the said State of Georgia and resident therein; and while it is true that, under the language employed in said tax act, a corporation created by the State of Georgia would be on the same footing with a corporation created by any other State, yet, in point of fact, there are no corporation dealing in sewing machines in said State of Georgia except such as are created by other States, nor are there likely to be any. There is in existence no sewing-machine company created by or domiciled in the State of Georgia, and the practical truth of the
case is that the sewing-machine business in Georgia is being
9 conducted by individuals who reside in the State and by corporations or companies, including complainant, who reside out of the State; and complainant charges that this fact was well known to the Legislature, and it was the intention of the Legislature in passing said act to so frame it as to have the effect of discrimination in favor of citizens of Georgia against the citizens of other States engaged in the same business, and such is in fact the effect thereof. For these reasons the said paragraph seventeen of the second section of the said act of the Georgia Legislature is violative of and in conflict with paragraph three, section VII, article 1, and also section two, of article four, of the Constitution of the United States, and therefore null and void.

Complainant further says that the fourteenth amendment of the Constitution of the United States declares that no State shall deny to any person within its jurisdiction "the equal protection of the law," and imposes a limitation therein upon the exercise of all the powers of the State which can touch the individual or his property, and that included among the powers thus limited or forbidden is that of unequal taxation; and complainant says that under said amendment it is exempt from any greater burden or charges, by
taxation or otherwise, than such as are equally imposed upon
10 all others and under like circumstances, and that in the particulars in this bill set forth the said seventeenth paragraph of the second section of said tax act is violative of and in conflict with the provision of said fourteenth amendment to the Constitution of the United States, and is therefore null and void as far as respects complainant.

The defendant, William A. Wright, though well informed of the invalidity of said illegal taxes as aforesaid, has, as comptroller gen-

eral of Georgia, notified complainant to appear at his office in the city of Atlanta and pay said tax of two hundred dollars for the privilege of doing business in said State of Georgia, and furnish him, the said Wright, with a list of all complainant's agents in said State and pay him the sum of ten dollars for each of said agents. He made this demand upon C. G. Lambert, the agent of said complainant, within the past — days, and threatened in case of refusal that he would issue execution for said sum of two hundred dollars and such additional amount for complainant's agents, at ten dollars each, as he, the said Wright, could ascertain; and complainant charges that he, the said Wright, demands of and from complainant and intends to issue execution against it under this head for six hundred dollars or more. The said defendant Wright stated to the said agent of complainant at the same time that the individuals
11 engaged in the business of selling sewing machines at retail would not be required under said seventeenth paragraph, heretofore quoted, to pay anything, and that said tax was to be collected out of complainant, but not from the said individuals who were doing a retail business in sewing machines.

Complainant fears that said Wright has already issued said execution against it, and it has reason to fear, and does fear and so charges, that the same has now been lodged in the hands of Lovick P. Thomas as sheriff of Fulton county, Georgia, with intention to levy upon and seize the property of complainant by virtue thereof. The said defendants also threatened complainant with prosecution against all its agents in case the provisions of said tax act, as embodied in said seventeenth paragraph hereinabove recited, should not be complied with, and complainant fears that, pending the litigation upon this bill, the said defendant Wright will cause its agents to be prosecuted under said law, thereby interfering with and preventing complainant from carrying on its lawful business as aforesaid and forestalling complainant's rights that are set up under this bill. The injury thus done would be and is so varied in detail and diverse as to time and place, covering more than forty agents and the same or a greater number of counties and the varied and
12 uncertain business of complainant therein, as that complainant could not prove its damage at law, and to attempt to proceed at law would involve great and unreasonable multiplication of suits.

Complainant further says that the proceedings above named, as instituted or about to be instituted by said defendant- under the tax and penal laws of the State, are summary in their nature and will have run their course and worked the wrongs aforesaid before the return day of process under this bill, unless said defendants be
13 promptly restrained touching the same.

Complainant does not know what other ministerial officers of this State besides defendant, Lovick P. Thomas, will be called upon to make arrests of its agents under said act of the Legislature, but it charges that warrants will be issued and lodged with officers in various parts of the State, and complainant prays for leave to add such officers as defendants to this bill, by way of amendment, whenever their names are ascertained.

Complainant expressly waives all discovery from each and all the defendants and prays that the writ of subpœna may issue, directed to each of the defendants herein above named, requiring them, under a suitable penalty, to be and appear at the next circuit court of the United States for the northern district of Georgia and stand to and abide by such order and decree as may be made
13 herein, said writ to be suitably framed according to the form and practice of the court.

Complainant prays that upon a final hearing of this bill the said William A. Wright, comptroller general, his deputies, assistants, and successors, may be perpetually enjoined from issuing any execution against complainant or any of its agents for the tax referred to in this bill, or any part thereof, and upon instituting any prosecutions against the agents of complainant under said act, and from causing any of said agents to be arrested, or their property, or the property of complainant to be levied on or seized under any writ or process issued by virtue of said act, and that the said defendant, Lovick P. Thomas, his deputies, servants, and agents be at said final hearing perpetually enjoined from levying upon or seizing or selling any of the property of complainant by virtue of any writ or process issued under the provisions of said above-recited paragraph of said tax act, and from making any arrests of the servants or agents of complainant under any prosecution that may be instituted by virtue thereof.

Complainant prays that the writ of injunction do now issue, to remain of force until the further order of this court, restraining the said defendants and each of them in accordance with the
14 above prayer for perpetual injunction; and complainant prays that, pending this application for interlocutory injunction, the defendants be temporarily restrained in accordance with the prayer above for the same.

And if complainant has in anything mistaken its remedy, it prays for such other and further relief as to the court may seem meet and just or the nature of the case may require.

HILLYER AND BRO.,
*Compl'z Sol's.*

The Circuit Court of the United States for the Northern District of Georgia.

UNITED STATES OF AMERICA,
*Northern District of Georgia.*

In person appeared C. G. Lambert, who, being duly sworn, says that he is agent of the Singer Manufacturing Company, the complainant in the above and foregoing bill, duly accredited as such agent, and is the principal officer of said company in the State of Georgia, being known as general agent for the States of Georgia, South Carolina, Florida, and a part of Tennessee. Subject to the orders and instructions which he receives from the home office, deponent has the control and management of the business of com-

plainant in the State of Georgia. He is better aquainted
15 with the facts stated in the foregoing bill than any other officer of the company, or any one else, as said facts come more immediately within his personal knowledge than that of any other agent or officer of said complainant corporation, whose principal office is more than eight hundred miles away, in another State, and its president and other officers are less qualified, for want of such knowledge and the means of knowing the state of facts, to verify the same than this deponent.

And the said deponent further says that the facts set forth and stated in the above and foregoing bill, so far as derived from his own knowledge, are true as stated, and, so far as derived from the knowledge of others, he believes them to be true.

C. G. LAMBERT.

[SEAL.] Sworn to and subscribed before me this 20 day of January, 1887.

WILL. HAIGHT,
*U. S. C. C. Commissioner.*

Filed in office Jan. 20, 1887.

A. E. BUCK, *Clerk*,
By O. C. FULLER, *Deputy*.

*Order to Show Cause.*

AT CHAMBERS, *Jan.* 20, 1887.

Read and considered.

Let the defendants show cause before me, in the city of Atlanta, at 10 o'clock in the forenoon, on the 29th inst., why the injunc-
16 tion prayed for should not be granted. Let the bill be filed and served, and let the writ of subpœna issue.

WM. T. NEWMAN,
*U. S. Judge.*

Filed in clerk's office 22 day of Jan'y, 1887.

A. E. BUCK, *Clerk*,
By O. C. FULLER, *Dep. Clerk*.

*Service.*

Due and legal service of this bill and of Judge Newman's order thereon is hereby acknowledged and copies waived, subpœna and service thereof waived, all further service waived.

Jan. 20, 1887.

L. P. THOMAS, *Sheriff*.
WM. A. WRIGHT, *Comp. Gen'l*.

Filed in clerk's office 21 day of Jan'y, 1887.

A. E. BUCK, *Clerk*,
By O. C. FULLER, *Dep. Clerk*.

Complainant expressly waives all discovery from each and all the defendants and prays that the writ of subpœna may issue, directed to each of the defendants herein above named, requiring them, under a suitable penalty, to be and appear at the next circuit court of the United States for the northern district of Georgia and stand to and abide by such order and decree as may be made
13 herein, said writ to be suitably framed according to the form and practice of the court.

Complainant prays that upon a final hearing of this bill the said William A. Wright, comptroller general, his deputies, assistants, and successors, may be perpetually enjoined from issuing any execution against complainant or any of its agents for the tax referred to in this bill, or any part thereof, and upon instituting any prosecutions against the agents of complainant under said act, and from causing any of said agents to be arrested, or their property, or the property of complainant to be levied on or seized under any writ or process issued by virtue of said act, and that the said defendant, Lovick P. Thomas, his deputies, servants, and agents be at said final hearing perpetually enjoined from levying upon or seizing or selling any of the property of complainant by virtue of any writ or process issued under the provisions of said above-recited paragraph of said tax act, and from making any arrests of the servants or agents of complainant under any prosecution that may be instituted by virtue thereof.

Complainant prays that the writ of injunction do now issue, to remain of force until the further order of this court, restraining the said defendants and each of them in accordance with the
14 above prayer for perpetual injunction; and complainant prays that, pending this application for interlocutory injunction, the defendants be temporarily restrained in accordance with the prayer above for the same.

And if complainant has in anything mistaken its remedy, it prays for such other and further relief as to the court may seem meet and just or the nature of the case may require.

HILLYER AND BRO.,
*Compl'z Sol's.*

The Circuit Court of the United States for the Northern District of Georgia.

UNITED STATES OF AMERICA,
*Northern District of Georgia.*

In person appeared C. G. Lambert, who, being duly sworn, says that he is agent of the Singer Manufacturing Company, the complainant in the above and foregoing bill, duly accredited as such agent, and is the principal officer of said company in the State of Georgia, being known as general agent for the States of Georgia, South Carolina, Florida, and a part of Tennessee. Subject to the orders and instructions which he receives from the home office, deponent has the control and management of the business of com-

plainant in the State of Georgia. He is better aquainted
15 with the facts stated in the foregoing bill than any other officer of the company, or any one else, as said facts come more immediately within his personal knowledge than that of any other agent or officer of said complainant corporation, whose principal office is more than eight hundred miles away, in another State, and its president and other officers are less qualified, for want of such knowledge and the means of knowing the state of facts, to verify the same than this deponent.

And the said deponent further says that the facts set forth and stated in the above and foregoing bill, so far as derived from his own knowledge, are true as stated, and, so far as derived from the knowledge of others, he believes them to be true.

C. G. LAMBERT.

[SEAL.] Sworn to and subscribed before me this 20 day of January, 1887.

WILL. HAIGHT,
*U. S. C. C. Commissioner.*

Filed in office Jan. 20, 1887.

A. E. BUCK, *Clerk*,
By O. C. FULLER, *Deputy.*

*Order to Show Cause.*

AT CHAMBERS, *Jan.* 20, 1887.

Read and considered.

Let the defendants show cause before me, in the city of Atlanta, at 10 o'clock in the forenoon, on the 29th inst., why the injunc-
16 tion prayed for should not be granted. Let the bill be filed and served, and let the writ of subpœna issue.

WM. T. NEWMAN,
*U. S. Judge.*

Filed in clerk's office 22 day of Jan'y, 1887.

A. E. BUCK, *Clerk*,
By O. C. FULLER, *Dep. Clerk.*

*Service.*

Due and legal service of this bill and of Judge Newman's order thereon is hereby acknowledged and copies waived, subpœna and service thereof waived, all further service waived.

Jan. 20, 1887.

L. P. THOMAS, *Sheriff.*
WM. A. WRIGHT, *Comp. Gen'l.*

Filed in clerk's office 21 day of Jan'y, 1887.

A. E. BUCK, *Clerk*,
By O. C. FULLER, *Dep. Clerk.*

best of defendant's knowledge, information, and belief, said
20 complainant is a wholesale as well as a retail dealer in sewing machines. Defendant does not admit that it was the intention of the Legislature in the passage of the act complained of to discriminate against complainant or any other non-resident dealer in sewing machines.

On the contrary, he does not believe such was the intention of the the Legislature in passing said bill. Defendant stated to complainant in substance that he should enforce the law and endeavor to collect taxes from those who are liable under the law. This is defendant's only object, to do his duty by enforcing the law. Defendant does not admit any allegation of said bill assailing the constitutionality of said law under which complainant is taxed, but prays that complainant may be required to prove all such allegations.

And having answered, &c., defendant prays to be hence dismissed with costs, &c.

CLIFFORD ANDERSON, *Att'y Gen'l.*

GEORGIA, *Fulton County:*

Personally came W. A. Wright, comptroller general of said State, who, being duly sworn, says that the statements contained in his foregoing answer are true to the best of his knowledge, information,
and belief.
21

WM. A. WRIGHT,
*Comp. Gen'l.*

Sworn to and subscribed before me this March 5, 1887.

EDGAR H. ORR,
*Notary Public, Fulton Co., Ga.*

Filed in clerk's office 5 day of March, 1887.

A. E. BUCK, *Clerk,*
By O. C. FULLER, *Dept. Clerk.*

*Order Continuing Cause for Hearing.*

AT CHAMBERS, *March* 5, 1887.

Argument on this application for injunction having begun this day and not concluded, it is ordered that the same be adjourned until 10 o'clock a. m. Saturday, the 26th inst., with leave to complainants to amend the bill.

WM. T. NEWMAN,
*U. S. Judge.*

Filed in clerk's office 5 day of March, 1887.

A. E. BUCK, *Clerk,*
By O. C. FULLER, *Dept. Clerk.*

*Order Continuing Hearing to April 2, 1887.*

In the Circuit Court of the United States for the Northern District of Georgia.

THE SINGER MANUFACTURING COMPANY
*vs.*
W. A. WRIGHT, Comptroller, & Others. } In Equity.

On consent of solicitors for both parties, it is ordered that the time of hearing on complainant's application for injunction
22 be enlarged and changed from Saturday next, as heretofore appointed, and that the same take place on Saturday, the second day — April next, at ten o'clock a. m.

This 21st March, 1887.

HILLYER & BRO.,
*Compt's Sol's.*

By the court:

WM. T. NEWMAN,
*U. S. Judge.*

Filed in clerk's office 21 day of March, 1887.
A. E. BUCK, *Clerk*,
By O. C. FULLER, *Dep. Clerk.*

*Affidavit of G. O. Penton.*

STATE OF GEORGIA, }
*Chatham County.* }

In person appeared G. O. Penton, who, being duly sworn, says that the foregoing individuals and firms are dealing in sewing machines exclusively in the city of Savannah, Georgia, the name of machine handled by each being set opposite to his or their name:

The Wheeler & Wilson M'f'g Co., Wheeler & Wilson m'ch's.
E. A. Upchurch, " " "
J. Williams, " " "
J. A. Pursley, " " "
New Home Sewing Machine Co., New Home "
M. F. Joyce, " " "
J. W. Hunt, " " "
G. E. Seely, " " "
Mell and Harris, " " "
J. Harkness, " " "
23 D. H. Dixon, Domestic m'ch's.
J. S. Evans, " "
W. H. Bradley, " "
J. B. Martin, " "
—— Johnstone, " "
Webster & Oliveros, American & Davis m'ch's.
—— Frekling, " " "
C. Mallard, " " "

The following firms, individuals, and many others are dealing in sewing machines, in connection with other goods, in the counties and towns set opposite to their names:

J. R. Knight, Waycross, Ware Co., Ga., New Home m'ch's.
W. J. Smith, " " " " "
J. W. Walker, Darien, McIntosh " " New Home "
J. A. McLeod, Emanuel " " " " "
Elbert Sellers, Johnson " " " " "
H. & H. Mattox, Homerville, Clinch " "
Charlton Droudy, " " " "
Allen Smith, " " " "
—— Tucker, " " " " White "
W. T. Doerflinger, Brunswick, Glynn Co., Ga., White & Royal St. Johns m'ch's.
Jacob Michelson, Brunswick, Glynn Co., Ga., Domestic m'ch's.
Bostwick Bros., " " " " New Home "
H. L. Harris, " " " " American "

G. O. PENTON.

[SEAL.] Sworn to and subscribed before me this twenty-sixth day of March, 1887.

E. B. WHITEHURST,
*Notary Public, C. C., Ga.*

This is to certify that the following firms and individuals are dealing in sewing machines:

24 J. R. Knight, Waycross, Ware Co., Ga., New Home sewing m'ch's.
W. J. Smith, Waycross, Ware Co., Ga., sewing m'ch's.
J. A. Walker, Darien, McIntosh Co., Ga., New Home sewing m'ch's.
J. N. McLeod, Emanuel Co., Ga., New Home sewing m'ch's.
Elbert Sellers, Johnson " " " " " "
H. and H. Mattox, Hornerville, Clinch Co., Ga., " "
Charlton Drowdy, " " " " " "
Allen Smith, " " " " " "
—— Tucker, " " " " White sewing m'ch's.
W. F. Doerflinger, Brunswick, Glynn Co., Ga., White and Royal St. John sewing m'ch's.
Jacob Michelson, Brunswick, Glynn Co., Ga., Domestic sewing m'ch's.
Bostwick Bros., Brunswick, Glynn Co., Ga., New Home sewing m'ch's.
H. L. Harris, Brunswick, Glynn Co., Ga., American sewing m'ch's.

G. O. PENTON.

Sworn to before me and subscribed in my presence this 25th day of March, 1887.

[SEAL.]

E. B. WHITEHURST,
*Notary Public, C. C., Ga.*

STATE OF GEORGIA, }
*Chatham County,* }

In person before me came G. O. Penton, who, being duly sworn, says that all persons and firms or companies dealing in sewing machines, as mentioned and enumerated in his two affidavits, one sworn to before E. B. Whitehurst, N. P., dated 25th of March, 1887, and the other sworn to before the same officer, dated 26 of March, 1887, are retail dealers in sewing machines, except the Wheeler and Wilson Manufacturing Co. and the New Home Sewing Machine Co., if the said New Home Sewing Machine Co. be in point
25 of fact itself and in its own right a dealer. Deponent is not sure that said New Home Sewing Machine Co. sell their wares on their own account, and here qualifies or corrects his former statement with the expression that possibly said company does not sell on its own account at retail in the State, but sells its wares at wholesale from beyond the State to Joyce & Hunt or others, who retail them in said State. With the qualification here expressed all other sewing-machine dealers named in said two affidavits are retail — in said sewing machines.

Of said retail dealers in sewing machines mentioned in said two affidavits there are a number who employ soliciting agents for said business and keep them in the field canvassing and operating for the sale of machines in the same manner as does the Singer Manufacturing Co., of which deponent is an agent, the only difference being that said Singer Manufacturing Co. is a sewing-machine company selling at retail and the others—all others—are individuals or firms selling sewing machines at retail.

Of the retail sewing-machine dealers aforesaid who employ and work by and through canvassing agents as aforesaid deponent instances and names the following, to wit: Joyce & Hunt, Mell & Harris, Webster, Oliveras, J. A. Walker, O. C. Hopkins, J. A. Britt, Mrs. Julia Cluk, Jessey Bruner, A. M. Johnson, Jessey Polk,
26 A. Sessions, L. Johnson & Co.; which last enumeration is not intended to be exhaustive, as there are believed to be others that may rightfully come within that class.

G. O. PENTON.

[SEAL.] Sworn to and subscribed before me this first day of April, 1887.

E. B. WHITEHURST,
*Notary Public, C. C., Ga.*

Filed in office April 2d, 1887.

A. E. BUCK, *Clerk,*
By O. C. FULLER, *Dep. Clerk.*

*Affidavit of W. H. Saul*

This is to certify that the following firms and individuals are dealing in sewing machines of the following makes in the city of Augusta, Ga.:

Thomas and Barton, 924 Broad St., deal in Domestic and New Home machines.

The following firms and individuals are dealing in sewing machines in the counties and towns (given after their respective names):

Toomer and Haselton, Athens, Clarke Co., deal in Domestic, New Home, and White machines.

J. H. Daniel and Son, Miller, Burke Co., Ga., general merchandise, sells New Home machines.

Wilken and Berrem, Miller, Burke Co., Ga., general merchandise, sells sewing machines.

J. H. Perkins, of Perkins Junction, Burke Co., Ga., general merchandise, sells Domestic machines.

Wilkins and Neely, of Waynesboro, Burke Co., Ga., general merchandise, sells New Home machines.

Marks and Davis, of Midville, Burke Co., Ga., general merchandise, solicits orders for sewing machines.

27 Shields and Bros., of Thomson, McDuffee Co., Ga., general merchandise, sells the American machines.

D. F. Irving, of Thomson, McDuffee Co., Ga., general merchandise, sells Household machines.

W. C. Smith, of Barton, Jefferson Co., Ga., general merchandise, sells Domestic machines.

W. C. Howser, of Waddy, Jefferson Co., Ga., general merchandise, sells White, Domestic, and New Home machines.

T. J. Orr, of Davisboro', Washington Co., Ga., general merchandise, sells Domestic machines.

William Walden, of Gibson, Glascock Co., Ga., general merchandise, sells the "Bogus" Singer machine.

T. L. Brown, of Davisboro', Washington Co., Ga., general merchandise, sells the American machine.

J. S. Brown, Oconee, Washington Co., Ga., general merchandise, sells New Home machines.

Lewis Davis, Wrightsville, Johnson Co., Ga., general merchandise, sells New Home machines.

W. K. Kight, Battle Ground, Johnson Co., Ga., general merchandise, sells N. Home machines.

S. B. Simmons, Sparta, Hancock Co., Ga., general merchandise, sells sewing machines.

Allen and Farmer, of Warrenton, Warren Co., Ga., general merchandise, sells sewing machines.

Mathew and Tuby, of Danbury, Wilkes Co., Ga., general merchandise, sells New Home machines.

Wiley Johnson, Washington, Wilkes Co., Ga., sells Domestic machines.

Thomas and Fortson, Washington, Wilkes Co., Ga., general merchandise, sells New Home machines.

—— Mims, of Nicholson, Jackson Co., Ga., general merchandise, sells Domestic and New Home machines.

R. S. Hill, Hartwell, Hart Co., Ga., general merchandise,
28 sells White, Crown, and New Home machines.

W. C. Smith & Bros., Elberton, Ga., general merchandise, sells the Daisy machine.

Turner & Brown, Elberton, Elbert Co., Ga., general merchandise, sells New Home.

V. S. Alford, Hartwell, Hart Co., Ga., general merchandise, sells New Home & Davis m'ch's.

J. T. Linder, Hartwell, Hart Co., Ga., general merchandise, sells the American.

Mrs. C. C. Brown, Sandersville, Washington Co., Ga., millinery, sells the Domestic machines.

A. J. Junegan, Sandersville, Washington Co., Ga., jewelry, sells New Home machines.

STATE OF GEORGIA, }
*Richmond County.* }

Personally came William H. Saul, who, being duly sworn, says that he is the manager for the Singer Manufacturing Company at Augusta, Georgia; that the above statement is true.

W. H. SAUL.

Sworn to and subscribed before me this 23 day of March, 1887.
[SEAL.] W. MILO OLIN,
*Justice of the Peace, 120 D., G. M.*

STATE OF GEORGIA, }
*Richmond County.* }

Before me in person came W. H. Saul, who, being duly sworn, says that all of the sewing-machine dealers named and enumerated in his affidavit, dated 23 day of March, 1887, sworn to before W. Milo Olin, J. P., are retail dealers in sewing machines, except, possibly, the Wheeler and Wilson Co., who may be wholesale
29 dealers. Of said retail dealers many employ and carry on their business through canvassing agents in their own and other counties, of whom may be instanced the following, to wit: Thomas & Barton, who employ and keep in the field from 15 to 25 of such canvassing sewing-machine agents, and who travel over ten to fifteen or more counties besides Richmond county. The following also employ canvassing agents as aforesaid, to wit: Toomer and Hazleton, V. S. Alford.

Deponent further says that with quite an accurate knowledge of the territory and business and seven or eight years' observation and experience therein—deponent, upon a fair estimate, says there are from 2,500 to 3,000 sewing machines sold annually in the territory appertaining to the Singer manufacturing agent's office—that is to say, this number of machines are thus sold in that territory other than the machines of complainant, the sales whereof amount to, in the same territory, approximately, 600 machines annually.

Deponent further says that the only difference between complainant and the other retail dealers aforesaid is that complainant is a sewing-machine company dealing at retail and the others are indi-

viduals or firms dealing at retail in sewing machines as aforesaid.

W. H. SAUL.

30 Sworn to and subscribed before me this first day of April, 1887.

[SEAL.] W. MILES OLIN,
*J. P.*, 120 *Dis't., G. M.*

Filed in office April 2, 1887.

A. E. BUCK, *Clerk*,
By O. C. FULLER, *Dep. Clerk.*

*Affidavit of C. M. Tucker.*

STATE OF GEORGIA, }
*Whitfield County.* }

In person appeared C. M. Tucker, who, being duly sworn, says that the following firms, individuals, and many others are dealing in sewing machines, in connection with other goods, in the counties and towns set opposite to their names:

J. A. McLain, Catoosa, Ringgold P. O., New Home.
E. E. Brown, Whitfield, Dalton P. O., New Home and National.
J. L. Smith, do. " " Domestic.

C. M. TUCKER.

Sworn to and subscribed before me this 26 day of March, 1887.

J. A. LONGLEY, *J. P.*

Filed in office April 2, 1887.

A. E. BUCK, *Clerk*,
By O. C. FULLER, *Dep. Clerk.*

*Affidavit of B. D. Armstrong.*

STATE OF GEORGIA, }
*Bibb County.* }

In person appeared B. D. Armstrong, who, being duly
31 sworn, says that the following individuals and firms are dealing in sewing machines exclusively in the city of Macon, Georgia, the name of machines handled by each being set opposite to his or their names:

R. J. Anderson & Co., White, Hartford, Imitation Singer.
Herrington & Blackshear, New Home, Standard Avera.
Wheeler & Wilson M'f'g Co., Wheeler & Wilson.

That the following are selling machines with other goods in said city of Macon, making the sale of sewing machines the leading feature of their business:

Burr Brown, Domestic Household.
Bone & Chappell, Imitation Singer.

That the following are dealing in sewing machines in the counties

and towns named: that they are running wagons in charge of canvassing agents and selling sewing machines exclusively:

Max Castle, Albany, Ga., New Home, Hartford, & Imitation Singer.

James Griggs, Putnam Co., New Home, Domestic, & Imitation Singer.

Jesse Paulk, Tifton, Ga., White, Imitation Singer.

McCasland & Co., Thomaston, Ga., Domestic, St. John.

The following firms, individuals, and many others are dealing in sewing machines, in connection with other goods, in the counties and towns set opposite to their names:

A. Baum & Co., Irwinton, Ga., White.
Baum & Sons, Toomsboro', " White.
Brannan & Co., Irwinton, " New Home.
Saunders & Co., Gordon, Ga., St. John, Imitation Singer.
32 Leverett & Co., Eatonton, Ga., St. John.
Leary & Co., Forsyth, " Domestic, New Home.
D. C. Joyner, Hawkinsville, " St. John.
Henry & Sons, " " Wheeler & Wilson.
R. H. Holloway, Milledgeville, " " "
Day & Gordon, Perry, " Imitation Singer.
Sperry & Co., Marshallsville, " Domestic, Imitation Singer.
John F. Lewis & Co., Montezuma, " White and New Home,
Shaw & Co., Americus, " American, White, & Crown.
A. C. Smith, Midway, " Crown, Avera.
Mercer & Griffin, Leary, " Domestic, Hartford.
S. T. Coleman, Fort Gaines, " Hartford, Household.
Harrell & Johnson, Americus, " Wheeler & Wilson.
Strong & Co., Ellaville, " St. John & Domestic.

B. D. ARMSTRONG.

Sworn to and subscribed before me this 26 day of March, 1887.

H. O. BEALL,
*C. S. C., Randolph County, Ga.*

STATE OF GEORGIA, }
*Bibb County.* }

In person appeared B. D. Armstrong, who, being duly sworn, deposes and says that all of the persons, companies, or firms named and enumerated in his affidavit, sworn to 26th March, 1887, before H. O. Beall, C. S. C. of Randolph county, Georgia, are retail dealers in sewing machines, unless it be the Wheeler & Wilson Manufacturing Co., who deal in such machines both at wholesale and retail.

Deponent further says that of said retail dealers named in his said affidavit the following operate or carry on their business by
33 and through canvassing agents in their own or other counties, to wit: R. J. Anderson & Co., Harrington & Blackshear, Burr and Brown, Bone and Chapel, R. R. Blacker, J. S. Simpson, A. J. Hubbard, F't Gaines Clay Co., Ga., running wagons. This enumeration is not intended to be exhaustive, as there are others

using agents who should be, as deponent believes, included in said last-named list.

Deponent further says that the only difference between complainant and the other retail dealers aforesaid is that complainant is a sewing machine company dealing in machines at retail and the others are individuals or firms dealing at retail in sewing machines as aforesaid.

B. D. ARMSTRONG.

Sworn to and subscribed before me this 31 day of March, 1887.

MATT. FREEMAN,
*N. P. & ex. Off. J. P., Bibb Co., Ga.*

Filed in office April 2d, 1887.

A. E. BUCK, *Clerk.*
By O. C. FULLER, *Dep. Clerk.*

*Affidavit of Wm. A. Griffith.*

STATE OF FLORIDA, }
*Leon County,* } *ss:*

In person appeared Wm. A. Griffith, who, being duly sworn, says that the following individuals and firms are dealing in sewing machines exclusively in the counties and towns in the State of Georgia, the name of machine handled by each being set opposite his or their names:

34 Parrish, Valdosta, Lowndes county, New Home.
Griffin, Quitman, Brooks " White & Imitation Singer.

That the following are selling sewing machines with other goods in said counties and towns, making the sale of sewing machines a prominent feature of their business:

E. Johnson, Bainbridge, Ga., Decatur Co., New Home & Imitation Singer.
B. F. Colbert, Bainbridge, Ga., Decatur Co., American & Household.
B. D. Fudge, Thomasville, Thomas Co., New Home.
Rountree & Co., Quitman, Brooks Co., Domestic.

That the following firms, individuals, and many others are dealing in sewing machines in connection with other goods in counties set opposite their names:

W. A. Davis, Decatur county, Ga., Domestic.
Reed Bros., Thomas " " do.
Jas. Watt & Bro., " " " White.
A. T. Prewatt, " " " American.
W. E. Barnes, Brooks " " New Home.

W. A. GRIFFITH.

Sworn to and subscribed before me this 28 day of March, 1887.
W. W. McGRIFF,
*Justice of the Peace.*

Filed in office April 21, 1887.
A. E. BUCK, *Clerk.*
By O. C. FULLER, *Dep. Clerk.*

*Affidavit of John Y. Dixon.*

STATE OF GEORGIA, }
*Fulton County.* }

Before me in person came John Y. Dixon, who, being duly sworn, says that he is the special examining book-keeper for the Singer Manufacturing Company, complainant in the bill now pending in the United States court, brought by said company against Wm. A. Wright, comptroller general, *et al.* Deponent's occupation and duties relative to said company are such as to enable him to have intimate knowledge of its affairs and operations, and he has the supervision and oversight of the books and accounts of all other and subordinate officers and agents of said company in the State of Georgia, as well as of the central office at Atlanta, Ga., and that said company is a retail dealer only in sewing machines in said State. Said company does not in any case or under any circumstances sell or part with sewing machines to any merchant or dealer to be sold again, but only sells to consumers or users thereof.

JOHN Y. DIXON.

Sworn to and subscribed before me this 5 day of March, 1887.
A. E. BUCK, *U. S. Comr.*

Filed in clerk's office May 9th, 1887.
A. E. BUCK, *Clerk.*
By O. C. FULLER, *Dep. Clerk.*

It being made to appear to the court that the within and foregoing affidavit made in the above-stated case by John Y. Dixon was
36 prepared and presented on the 15 day of March, 1887, the day of its date, by inadvertance not marked filed, it is ordered that the filing of the same be entered and certified by the clerk now for then.

In open court this May 10th, 1887.

WM. T. NEWMAN,
*U. S. Judge.*

Filed in clerk's office 10 day of May, 1887.
A. E. BUCK, *Clerk.*
By O. C. FULLER, *Dep. Clerk.*

*Amendment to Bill.*

In the Circuit Court of the United States for the Northern District of Georgia.

THE SINGER MANUFACTURING CO.
*vs.*
W. A. WRIGHT, Comptroller Gen'l, *et al.*
} In Equity. Bill for Injunction and Relief.

First. Complainant, by leave of the court, amends its bill and says that there are retail dealers in sewing machines in probably more than seven-eighths of the counties in the State of Georgia, and were so at the date of the passage of said act and at all times since then. In a few counties there are none at all, and in some counties, such as Fulton, Richmond, Chatham, Clarke, Muscogee, Bibb, and Floyd, there are quite a number, ranging from five to ten in
37 each. In the whole State it may be said with much certainty that there are at least two hundred and fifty such retail dealers. Probably there are more than three hundred of such retail dealers in the whole State.

The different sewing machines dealt in regularly, handled, and sold by such retail dealers in the State comprise the following named or described, according to their several patents or trade names, to wit: "Chicago Singer," "Stewart Singer," "Philadelphia Singer," "Williams Singer," "New York Singer," "Wilson Singer" (not Wheeler & Wilson), "Household," "Weed," "Davis," "Remington," "Howe," "Florence," "Victor," "Domestic," "Grover & Baker," "White," "American," "New Home," "Royal St. John," "Crown," "Standard," "Wheeler & Wilson," "Wilcox & Gibbs," and the Singer sewing machine proper, of which complainant is the sole proprietor.

Complainant is unable to state with accuracy at the time of preparing this amendment the names of all the retail dealers in all of said sewing machines, owing to the wide territory over which they are scattered, but says that of the number are the following, and prays leave to add others, by way of amendment, hereafter when discovered and if deemed material:

Barton McClusky & Co., Augusta, Ga., Key & Thomas, Augusta, Ga.; Joyce & Hunt, Savannah, Ga.; Harris & Co., Savannah, Ga.; Burr & Brown, Macon, Ga.; Toomer & Hazleton, Athens, Ga.; Wilson & Stiff, Atlanta, Ga.; H. C. Peeples, Atlanta, Ga.; J. H.
38 Stowers, Atlanta, Ga.; Davis and Davis, Rome, Ga.; Wm. Cooper, Columbus, Ga.; —— Rhoades, Columbus, Ga.; C. J. Daniels, Albany, Ga.; P. M. Griggs, Madison, Ga.; Mrs. E. L. Richards, Talbotton, Ga.; H. R. Chambers, Barnesville, Ga.; J. J. Leary, Forsyth, Ga.; A. G. Hutchins, Jackson, Ga.

Of these the following deal in sewing machines exclusively:

Barton McClusky & Co., Key & Thomas, Joyce & Hunt, Harris & Co., Burr & Brown, Toomer & Hazleton, Wilson & Stiff, H. C. Peeples, Wm. Cooper.

Possibly a small number of the last named may deal in musical instruments or other like articles, but these only incidentally and in a small way, their leading *and* characteristic being that of dealing in sewing machines.

The following are also retail dealers in sewing machines in the State of Georgia, selling the same, in their own or other counties, in person or by traveling agents, they being either individuals or firms, and some of them dealing in sewing machines exclusively, and others in connection with, but often subordinate to, sewing-machine business:

J. L. Saunders, Coleman's Station, Ga., American, White, New Home, & Domestic.
J. T. Strandford, Cuthbert, Ga., New Home, White, and Domestic.
F. Pulaski & Co., " " St. John.
L. P. & R. R. Auther, Shellman, Ga., New Home & Domestic.
C. L. Mize, Dawson, Ga., Domestic.
J. L. Lee, " " Bogus Singer.
J. W. Harris, Americus, Ga., New Home & Domestic.
Henderson & Bro., Blakely, Ga., American.
39 Butler & Turner, Camilla, Ga., New Home.
Mrs. Emersons, " " Domestic.
J. L. Hand, Pelham, " New Home.
W. J. Carroll, Nashville, " " "
Guren & Weston, Enigma, " Domestic.
E. Johnson, Bainbridge, " New Home & Imitation Singer.
B. F. Colbert, " " American & Household.
B. B. Fudge, Thomasville, Ga., New Home.
Roundtree & Co., Quitman, Ga., Domestic.
W. A. Davis, Decatur Co., " "
Reed Bros., Thomas " " "
James Watt & Bro., Thomas county, Ga., White.
A. T. Prevatt, " " " American.
W. E. Barnes, Brooks " " New Home.
J. H. Daniels & Son, Millen, " "
Wilkins Berren, " " sundry sewing machines.
J. H. Perkins, Perkins' Junction, " Domestic.
Wilkins & Neely, Waynesboro', " New Home.
Marks & Davis, Midville, " Soliciting orders for S. m's.
Shields & Bro., Thomson, " American.
D. F. Irving, " " Household.
W. C. Smith, Barton, " Domestic.
W. C. Houser, Wadley, " White, Domestic, & New Home.
T. J. Orr, Davisborough, " Domestic.
Wm. Walden, Gibson, " Bogus Singer.
T. L. Brown, Davisborough, " American.
J. S. Brown, Oconee, " New Home.
Lewis Davis, Wrightsville, " " "

W. K. Kite, Battle Ground, Ga., New Home.
S. B. Simmons, Sparta, " sewing machines generally.
Allen & Farmer, Warrenton, " sewing machines generally.
40 Mathews & Tuley, Danburgh, Ga. New Home.
Wiley Johnson, Washington " Domestic.
Thomas & Fortson, " " New Home.
Minners, Nicholson, " Domestic & New Home.
A. S. Hill, Hartwell, " White, Crown, & New Home.
W. C. Smith, Elberton, " Daisey Machine.
Turner & Brower, Elberton, " New Home.
V. S. Alford, Hartwell, " New Home & Davis.
J. T. Snider, Americus, " American.
Mrs. C. C. Brown, Sandersville, " Domestic.
A. J. Jernigan, " " New Home.
J. A. McLane, Catoosa, " " "
E. E. Brown, Dalton, " New Home & National.
J. L. Smith, " " Domestic.
R. J. Anderson & Co., Macon, " White, Hartford, & Imitation Singer.
Herrington & Blackshear, Macon, " New Home, Standard, & Avery.
Bone & Chappell, " " Imitation Singer.
M. Castle, Albany, " New Home, Hartford, & Imitation Singer.
Jas. Griggs, Putnam Co., " New Home, Domestic, & Imitation Singer.
Jesse Paulk, Tifton, " White & Imitation Singer.
McCasland & Co., Thomason, " Domestic & St. John.
A. Bonner & Co., Irvington, " White.
Baum & Sons, Toomsboro', " "
Bannon & Co., Irvington, " New Home.
Sanders & Co., Gordon, " St. John & Imitation Singer.
Leverett & Co., Eatenton, " St. John.
Leary & Co., Forsyth, " Domestic & New Home.
D. C. Jounier, Hawkinsville, " St. John.
Henry & Sons, " " Wheeler & Wilson.
R. H. Holloway, Milledgeville, " " "
Day & Gordon, Perry, " Imitation Singer.
41 Sperry & Co., Marshallville, Ga., Imitation Singer & Domestic.
J. T. Lewis & Co., Montezuma, Ga., White & New Home.
Shaw & Co., Americus, " " American, & Crown.
A. C. Smith, Midway, " Crown & Avery.
Mercer & Griffin, Leary, " Domestic & Hartford.
S. T. Coleman, Ft. Gaines, " Household "
Harroll & Johnson, Americus, " Wheeler & Wilson.

| | | | |
|---|---|---|---|
| Strong & Co., Ellaville, | | Ga., | St. John & Domestic. |
| E. A. Upchurch, Savannah, | | " | Wheeler & Wilson. |
| J. Williams, | " | " | " " |
| J. A. Pursley, | " | " | " " |
| Mell & Harris, | " | " | Domestic. |
| V. Hardness, | " | " | " |
| V. H. Dixon, | " | " | " |
| B. S. Evins, | " | " | " |
| U. H. Bradley, | " | " | " |
| J. B. Martin, | " | " | " |
| Webster Oliveros, | " | " | American & Davis. |
| —— Fickling, | " | " | " " |
| C. Mallard, | " | " | " " |
| J. R. Knight, Waycross, | | " | New Home. |
| W. J. Smith, | " | " | machines. |
| J. W. Walker, Berrien, | | " | New Home. |
| V. N. McLeod, Emanuel, | | " | " |
| E. Seller, Johnson, | | " | " |
| H. & H. Mattox, Homerville, | | " | machines. |
| Charlton Droudy, | | " | " |
| Allen Smith, | | " | " |
| —— Tucker, Clinch Co., | | " | White. |
| W. T. Doerflinger, Brunswick, Ga., | | | White, Royal & St. John. |
| J. Mitchelson, | " | " | Domestic. |
| Bostick & Bros., Brunswick, Ga., | | | New Home. |
| H. L. Harris, | " | " | American. |
| V. R. Knight, Waycross, | | " | New Home. |

There is no individual or firm in the State of Georgia engaged in the selling of sewing machines at wholesale, and was not at the time of the passage of said tax act. There are five sewing-machine companies engaged in the wholesale trade, to wit, "The New Home," "The Wheeler and Wilson," "The Domestic," "The White," and "The American." These all pay the $200.00 State tax, and their machines are supplied at wholesale to retail dealers, who furnish consumers. These retail dealers number from two hundred and fifty to three hundred in the State. They employ sewing-machine agents and canvassers, some of them as many as twenty or more. Such agents and canvassers travel over the different counties in this State and solicit trade, and in that way, by such canvassing and soliciting, sell the sewing machines of such retail dealers. This is exactly the business done by complainant, and is exactly the manner in which it is done. The business of some of such retail dealers other than complainant is large, not only in respect to the number of agents employed, but quantity of machines sold, as instance Barton McClusky & Co., of Augusta, whose sales probably approximate twenty to twenty-five machines per day in the aggregate of
43 the different counties where the- operate.

Complainant prays leave to amend further by adding the names of other dealers whose agents and canvassers sell sewing machines, when ascertained and if deemed material.

Under the language and meaning of said seventeenth paragraph of the second section of said tax act, in its practical application as administered by defendant and according to the true meaning of the same, all of the different sewing machines named and described above in this amendment are sold throughout said State of Georgia by said retail dealers in sewing machines free of any license tax whatever, either the general license tax of two hundred dollars or said special tax of ten dollars on agents, except that the Wheeler & Wilson, the Domestic, the New Home, the White, the American, and complainant's machines are sold or handled under the general license tax of two hundred dollars, and out of this number complainant, except, possibly, the New Home in some small particulars, is the only one who does also a retail business. The other five companies last above named deal exclusively with said retail dealers, and not with consumers, and employ from one to three agents each, who solicit orders from said retail dealers and forward the same to manufacturers outside the State.

44 All the sewing-machine companies herein enumerated, other than complainant and the said five last above named, send their machines to said retail dealers without having any office or agent in the State, and their goods are put on the market and sold by said retail dealers in the same manner that complainant's goods are sold, without paying either the two hundred dollars general business tax or the ten dollars each for agents. Some of said retail dealers handle and deal in the machines of as many as five or six of said non-taxpaying companies, and some have branch offices in different counties of the State. All the wholesale dealers in Georgia (five in number) are sewing-machine companies, and complainant, out of the three hundred retail dealers in said State, is the only one that is a sewing-machine company.

Complainant charges that it does not deal in sewing machines at all by wholesale and has not done so for many years, and is not of the class of wholesale dealers, and that under a classification according to business followed, and within the meaning of any classification of subjects as expressed in said article of the constitution of the said State, complainant is a retail dealer only in sewing machines,

45 and is one of a class numbering more than two hundred and fifty retail dealers in sewing machines; that the only and sole circumstance making any difference between the numbers of said class relative to said classification, according to subjects or business, is in the number and value of the sales made by each. The value and amount of complainant's sales do not very materially excel those of a number of its next largest competitors and comprising comparatively only a small fraction of the total sales of sewing machines in said State; and yet the language and words of description used in said seventeenth paragraph of the second section of said tax act are such as to single out complainant, so that it, being "a sewing-machine company," is the only one of all the retail dealers in said State upon whom either the two-hundred-dollar general license tax or ten-dollar agent's — is levied. All other retail sewing-machine dealers (though some of them are partnerships and some

of them are companies and some of them individuals, and all doing a business identical with that of complainant) of every kind, name, and description except complainant are by the provisions of said seventeenth section or clause wholly exempt from both said two-hundred — general license tax and also said ten-dollar special or agent's tax.

46 All companies that are required to pay the two-hundred-dollar State tax, except complainant and except the Wheeler & Wilson and the New Home in the minor particulars aforesaid, are wholesale dealers, and their machines reach the public through individuals and firms, who are retail dealers. These latter sell through sewing-machine canvassers and agents, but none of them except as aforesaid pay or, under the language of said 17th section, are liable for the said ten-dollar agents' tax.

So that out of the whole number of persons who deal in sewing machines at retail, in person or by agents, as corporation, partnership, company, or individuals, resident or non-resident, complainant, except as aforesaid, is the only and sole party upon whom, under the unequal and unjust terms of said seventeenth paragraph of second section of said tax act, the onerous and grossly oppressive burden of said taxes are made to fall or attempted to be enforced.

Complainant further charges that the interpretation here placed upon said seventeenth paragraph of said second action [section] does not materially differ from that placed upon it by the defendants. Those, and those only, in this amendment and in the original bill described as liable to said tax are held to be so by defend-

47 ants. Those, and those only, in this amendment and original bill described as exempt the defendants also hold are exempt and have made and intended making no exaction of said taxes from them; and yet said defendants, though well informed of the violation of complainant's constitutional rights to protection therefrom, intend exacting said taxes from complainant unless restrained.

Complainant says that such unequal and unjust and oppressive taxation is not uniform, and is so ununiform as to be plainly violative of the constitution of the State of Georgia and of the United States in manner and form aforesaid, and that it has the right to have it so declared by the courts, and to have the relief prayed for in the bill, or other relief proper to its case as the court shall decree.

Second. Complainant further amends its bill and says that under the scheme of taxation set out and contained in the clauses of the said second section of said tax act, amongst the whole number of professional men and officers, artists, keepers of pool and billiard tables, or other like tables, or tin-pin alleys, vendors of patent medicines, jewelry, and other like articles, insurance agents, emigrants' agents, vendors of goods traveling in boats, lightening-rod

48 dealers, dealers in pianos or musical instruments, persons having shows and exhibitions, circus companies, dealers in spirituous and malt liquors, dealers in pistols and knives, dealers in futures, dealers in iron safes, itinerant traders in buggies and other vehicles, peddlers in stoves or ranges, dealers in billiard or pool tables, and nurserymen, running through the entire twenty-five

clauses of said section, and the persons coming within the scope of said section and made subject to license or other business tax by it, the number including complainant, probably more than three thousand persons, and out of the entire catalogue complainant is the only one upon whom the unjust discrimination and onerous burden and criminal liability complained of in this bill is imposed; and complainant further says that out of the whole number of tax-payers of any and all classes provided for in said tax act under any and all of its sections, the total of such tax-payers numbering over the whole State probably more than a hundred thousand persons, complainant is the only one by said act singled out for and crushed under said unjust discrimination contained in said tax act, to all the sections and clauses of which relation is here had; and complainant says

49 that in addition to the facts and charges elsewhere in this bill appearing, the violation of that principle of equality and uniformity and right to equal protection of the laws to which complainant is, under the Federal and State constitutions, entitled is made the more plainly to appear when it is perceived from the terms of said tax act that in the wrong it does to complainants there is no companion sufferer. Complainant says that no tax act can be permitted to stand against the complainant thus made by any victim, and especially when complainant is substantially the only victim.

Complainant further says that, though chartered originally by the State of New Jersey, it has been conducting its business in the State of Georgia, the same being transactions of commerce exclusively, viz., that of selling its wares and having large stocks of the same, with horses, wagons, and outfit on hand, and the necessary buildings rented and secured, in Georgia. In this manner complainant entered the State of Georgia 15 or more years back, and complainant has been in the said State, thus occupied and domiciled, continuously for that time or longer under the sanction of its laws, and had in said State property, appliances, and outfit, as aforesaid, of the value of twenty-five thousand dollars or more at the time said tax act in this bill complained of was passed.

50 Complainant had at the time of the passage of said act and still has outstanding in Georgia two thousand or more of executory contracts, made in accordance with the statutes of said State, for the sale of sewing machines on the installment plan, and, under that kind of contract, it had and now has these sewing machines in the hands of people in Georgia, and it cannot carry out its said contracts of sale and make its collections if, by means of said unjust discrimination, it is required to discontinue its business in said State.

Complainant cannot successfully do business in the State of Georgia in the face of the strong competition under which it labors if it has to bear the burdens of said tax whilst its competitors are relieved of the same, and sees no resource but it will have its business substantially broken up and its property heavily sacrificed unless the court will grant the relief sought by this bill.

Complainant prays as it before prayed, &c.

HILLYER & BRO., *Compl's Sol's.*

STATE OF GEORGIA,
*Fulton County.*

You, C. G. Lambert, do solemnly swear that the same facts
51 stated by you in your affidavit to the original bill for making or showing it appropriate that the bill be verified by you apply also to this amendment.

You do further swear that the facts stated in the above and foregoing amendment, so far as derived from your own knowledge, are true, and so far as derived from the knowledge of others you believe them true.

C. G. LAMBERT.

Sworn to and subscribed before me this 2 day of April, 1887.

O. C. FULLER,
*Deputy Clerk.*

Ordered, That the above and foregoing amendment be allowed and the same filed with and made part of the record, in pursuance of leave heretofore granted.

In open court this 2d April, 1887.

WM. T. NEWMAN,
*U. S. Judge.*

Service of above amendment acknowledged and copies waived this 2d April, 1887.

CLIFFORD ANDERSON,
*Counsel for Def't.*

Filed in clerk's office April 2d, 1887.

A. E. BUCK, *Clerk*,
By O. C. FULLER, *Deputy.*

52 *Order Postponing Hearing to* 23 *April*, 1887, *etc.*

In the U. S. Circuit Court for the Northern District of Georgia.

THE SINGER SEWING MACHINE COMPANY
*vs.*
W. A. WRIGHT, Comptroller General, &c.
} In Equity. Bill for Injunction, &c.

The complainant not having perfected his amendment to the above-stated bill, to enable it to file which the case was postponed from the last hearing until to day, and complainant having exhibited to-day for the first time a number of lengthy affidavits in support of its bill as amended—

It is, for the purpose of enabling defendant and his counsel to examine said amendment and said affidavits and to answer and reply to the same, should they so desire, ordered by the court that the hearing of said bill for injunction be postponed until the 23 day of this present month, at ten o'clock a. m., at the court-room, in the city of Atlanta, Georgia. It is further ordered that if either side shall file

gations by which a debt is secured" is treated for the purpose of assessment and taxation as an interest in the property affected thereby, and, "except as to railroad and other quasi-public corporations," the value of the property affected, less the value of the security, is to be assessed and taxed to its owner, and the value of the security is to be assessed and taxed to the holder. By the same article "the franchise, roadway, road-bed, rails, and rolling stock of all railroads operated in more than one country" are to be assessed at their actual value and apportioned to the counties, cities, and districts in which the roads are located in proportion to the number of miles of railway laid therein, no deduction from this value being allowed
62 for any mortgage on the property. It was held "that in the different modes thus prescribed of assessing the value of the property of natural persons and the property of railroad corporations as the basis of taxation there is a departure from the rule of equality and uniformity."

It was further held that "private corporations are persons within the meaning of the first section of the fourteenth amendment, and are entitled, so far as their property is concerned, to the equal protection of the laws." I have quoted the language of the head-notes in the San Mateo case, and the decision was substantially the same in the Santa Clara case. Other questions were involved in both cases not material here. It will be perceived that by the constitution of California in assessing the property of natural persons for taxation deduction was to be made for the amount of mortgages therein, but in the case of railroads no such deduction should be made. It may be proper to state that both of these cases were taken to the Supreme Court, but the constitutional questions involved was [were] not decided in either by that Court.

The San Mateo case was settled before a decision was ren-
63 dered, and in the Santa Clara case the Court declined to decide the constitutional question, placing the judgment of affirmance on other grounds. In the State railroad *railroad* tax cases, 92 U. S., 575, the fourteenth amendment was not specially drawn in question, but the Supreme Court held that a statute which prescribed a different rule of taxation for railroad companies from that of individuals did not violate the State constitution, and, in the language of the 6th head-note, "nor does it violate any provision of the Constitution of the United States." So that, in view of this latter case and of a number of other decisions by the Supreme Court, I do not know how far the San Mateo and Santa Clara cases should be regarded as authority; but, giving them that weight to which eminent position and learning and ability of the justice and judge presiding entitles them, I do not see that they control the question here.

One marked distinction is that there the tax was on property, as to which a much stricter rule can be and is enforced than as to business. Property can be taxed a certain fixed per cent. on its value and the tax can be easily ascertained and collected.
64 As to business this cannot be done, or at least cannot be done without great difficulty; so that a very general practice in

all the States, I think, is to assess a specific tax on business, the amount of such tax being fixed, of course, with reference to the amount and character of the business.

Again, the action of California was positive, affirmative, fixing in the law one basis for assessing the property of natural persons for taxation and a different basis and highly discriminating rule as to railroads.

Here the complaint is of omission to act—omission to include certain dealers in the scheme of taxation.

There that which it was held rendered it unconstitutional appeared on the face of the law; here it requires evidence *aliunde* to justify even an attack on the law. But I think it is unnecessary to pursue this branch of the investigation further.

It is not claimed that the clause of the constitution of Georgia which as to business tax only requires uniformity as to the "same class of subjects" is in any way violative of the Constitution of the United States; so that if the scheme of taxation provided by the paragraph and section of the act of 1886 drawn in question
65 here is not repugnant to the State constitution, I do not see how it denies to complainant "the equal protection of the law." There are several other State constitutions in which the language restrictive of the taxing power is identical with that of the constitution of Georgia. There are many others substantially the same. It will never be held anywhere, I imagine, that the States may not classify business for taxation.

This brings me to the consideration of the question in [is] this tax act violative of or in conflict with the State constitution. The clause referred to, art. 7, sec. 2, par. 1, is as follows: "All taxation shall be uniform upon the same class of subjects, and ad valorem, and all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws." The requirement that "taxation shall be ad valorem on all property subject to be taxed" has been held by the supreme court of Georgia in many cases not to apply to taxation of business. 42 Ga., 596; 49 Ga., 195; 50 Ga., 530; 52 Ga., 251; 53 Ga., 410; 60 Ga., 133; 63 Ga., 645; 64 Ga., 128.

The power to tax business is controlled only by the clause
66 "all taxation shall be uniform upon the same class of subjects." This is a restriction upon the power to tax, but the restriction is as to uniformity, and this uniformity as to the "same class of subjects." The power to classify and to arrange in "classes of subjects" is not limited or restricted. This is left to the Legislature.

A mere arbitrary arrangement of the same business precisely into separate classes and discriminating taxes as to the classes might not be upheld; but where there is reasonable difference and distinction the Legislature is unrestricted in the matter of classification.

Hence sewing-machine companies selling sewing machines in this State and wholesale dealers are placed in a class and taxed uniformly. Complainant's counsel insist, first, that the expression sewing-machine companies applies only to corporations, and that it

makes a class out of corporations doing a sewing-machine business and fails to include firms or individuals doing similar business. It is insisted with much more earnestness, however, that even if the language used is held to include corporations, joint-stock companies and partnerships, that it certainly does not include individuals engaged singly in
67 manufacturing and selling sewing machines. The first point is clearly erroneous. The term sewing-machine companies includes, necessarily, all "companies," whether corporate, joint-stock, or firms; and I am inclined to think it includes individuals engaged in manufacturing sewing machines and in selling the same in Georgia. The Legislature evidently desired to put this tax on all manufacturers of sewing machines engaged in selling by themselves or agents in this State, and it did not attempt thereby to tax the manufacturing (which in complainant's case is done out of the State), as is argued here, but it taxes the business of selling. It places manufacturers engaged in selling in Georgia in a class of sellers whether sellers by wholesale or by retail. Why is it not competent for the Legislature to do this? In delivering the opinion of the court in Davis & Co. *vs.* Macon, 64 Ga., 128, Judge Bleckley uses this language: "The constitutional requirement that 'all taxation shall be uniform on the same class of subjects' is not infringed by the ordinance in the provision we are considering. The producer whose trade is incident to production and the middleman whose trade is intermediary between the pro-
68 ducer and the consumer belong not to the same class, but to different classes of subjects in a scheme of taxation; at least the difference is wide enough to justify, if not to compel, its recognition in shaping the ordinance." The contest shows that the matter under discussion is sales by the producer as a subject of taxation and not production, and also of sales in a city of products raised out of the city. Change the term "producer," used by Judge Bleckley, to manufacture and the application of the language to this case is perfect.

I think the Legislature in passing this act assumed that companies engaged in selling their own machines through general agencies did a large business and should be classed with wholesale dealers. This assumption as to the Singer company, at least, is fully borne out by the statements in the bill.

But complainant says that it sells in Georgia exclusively to consumers or users—in other words, does a retail business entirely—and that there are a large number of other retail dealers, individuals, and firms that are not taxed.

I see no reason why the State may not fail to tax certain classes of business. The head-note to the case of Curtis *vs.* The
69 Mayor, etc., of Albany, 60 Ga., 597, is in these words: "The provision of the constitution of 1877 that all taxation shall be uniform upon the same class of subjects * * * within the territorial limits of the authority levying the tax does not prevent the imposition by a municipal corporation of a tax on one class of business and not on another." In the 2d head-note to Davis & Co.

*vs.* Macon, 64 Ga., 128, this language is used: "The validity of this specific tax is not impaired by exempting the wagon used in delivering milk from dairies on country farms, since the city may tax one class of business and exempt another, or may tax different occupations and their instrumentalities unequally."

If this be true as to municipal corporations, how much truer is it of the State, whose creature the municipality is. If the classification is proper, therefore this objection to the act is not good.

In Cooley on Taxation, pages 164 to 171 (second edition), the rule laid down by the supreme court of Georgia is fully sustained. I quote from page 165: "The Legislature must decide when and how and for what public purpose a tax shall be levied, and must select the subjects of taxation. All this is legislative, and the
70 legislative conclusion in the premises must be accepted as proper and final." Much more authority might be cited to the same effect.

But I think the supreme court of Georgia have clearly indicated in the decision cited how this clause should be construed, and that construction which the highest court of the State would adopt will govern in the Federal courts. 92 U. S., 575; 105 U. S., 667.

Courts will not hesitate if a statute is clearly unconstitutional to so declare it; but it must be clear that it is repugnant to the Constitution. On this subject said Chief Justice Marshall, in Fletcher *vs.* Peck, 6 Cranch (S. C.) 87: "The question whether a law is void for its repugnancy to the Constitution is at all times a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative in a doubtful case."

Especially is this true of tax acts. The power to raise revenue for the support of the Government is necessary to its existence, and as incident to this power the right to determine upon what subjects and when and how the revenue shall be collected.

And the courts do not undertake to protect against very objectionable taxation unless it be violative of the Constitution.
71 I do not believe that this tax is violative of either the Constitution of the United States or the constitution of the State, and I must consequently deny the injunction prayed for and dismiss the bill.

WM. T. NEWMAN,
*U. S. Judge.*

Filed in office May 18, 1887.

A. E. BUCK, *Clerk,*
By O. C. FULLER, *Dep. Clerk.*

*Order Denying Injunction and Decree Dismissing Bill.*

Circuit Court of the United States, Northern District of Georgia.
March Term, 1887.

MAY 18, 1887.

This cause came on to be heard and was argued by counsel on the 10th and 11 days of this month on the bill and amendments and the

answers and affidavits filed, and the court, having duly considered said bill and the application for injunction prayed for in said bill, does now order and adjudge that the prayer for injunction be denied, and that said bill be dismissed, with costs to be taxed against complainant by the clerk of this court. Let this order be entered on the minutes of the circuit court of the United States for the northern district of Georgia.

WM. T. NEWMAN,
*U. S. Judge.*

72 Filed in clerk's office 18 day of May, 1887.
A. E. BUCK, *Clerk,*
By O. C. FULLER, *Dep. Clerk.*

*Petition for Amended Decree, &c.*

In the Circuit Court of the United States for the Northern District of Georgia.

UNITED STATES OF AMERICA, }
*Northern District of Georgia.* }

To the judges of the circuit court of the United States for the northern district of Georgia:

The petition of The Singer Manufacturing Company, the above-named complainant, respectfully showeth that on the 23 day of April, 1887, the court for good cause ordered that the hearing and argument on complainant's application and motion for interlocutory injunction be adjourned and continued until the 28 day of April, 1887, but by accident and inadvertance such order of adjournment was omitted to be entered of record, and petitioner further represents to your honors that in the decree rendered in the above-stated cause on the 18 day of May instant, during this present term of the court, an accidental omission occurs in that the said decree fails and omits to recite that the hearing heretofore had in said cause and mentioned in the decree was had upon complainant's appli-
73 cation or motion for interlocutory injunction and was not a hearing in the cause as if at issue; and your petitioner further represents to the court that by like accident it is in said decree recited that said hearing occurred on the 10th and 11th of May instant, whereas in truth and in fact the same occurred on the 9th and 10th instants.

And your petitioner prays that without prejudice said errors may be corrected and amended by order of the court and the same entered now for then; and as in duty bound, &c.

This 23 day of May, 1887.

HILLYER & BRO.,
*Defendant's Solicitors.*

Filed in clerk's office June 1st, 1887.

A. E. BUCK, *Clerk.*

*Amended Decree.*

In Open Court, March Term, 1887.

On hearing the above and foregoing petition, the court here being apprised of the truth of the same, it is ordered that the record be so amended as to show that said application for interlocutory injunction was adjourned from the 23d to the 28 day of April, 1887, as recited in the petition, and that said decree be amended so as to recite that the hearing therein mentioned was had on complainant's application for interlocutory injunction as aforesaid, and that said hearing occurred on the 9th and 10th of May, 1887, instead
74 of the 10th and 11th of May, 1887, and that this order be entered now for then as and for said 18th day of May, the date of said decree, and with the same effect as if entered and contained in the decree originally; this without prejudice to complainant's right to move hereafter against said decree in any appropriate form seeking to review and reverse the same.

June 1st, 1887.

WM. T. NEWMAN,
*U. S. Judge.*

Filed in clerk's office June 1st, 1887.

A. E. BUCK, *Clerk.*

*Notice of Petition for Appeal.*

Circuit Court of the United States for the Northern District of Georgia.

THE SINGER MANUFACTURING COMPANY
*vs.*
WILLIAM A. WRIGHT, Comptroller General of Georgia, and Lovick P. Thomas, Sheriff of Fulton County, Georgia. } In Equity.

To William A. Wright, comptroller general of Georgia, and Lovick P. Thomas, sheriff of Fulton county, Georgia:

The undersigned, The Singer Manufacturing Company, hereby notifies you that in the matter of the decree and order of dismissal in favor of the defendants above stated against the said
75 The Singer Manufacturing Company, signed by the court, denying the injunction prayed for by said complainant and dismissing its bill, said complainant will, during the session of said circuit court now being held, petition said court for an appeal from said judgment and decree to the Supreme Court of the United States, and said company will likewise execute and tender to said court a bond, as required by law, and pray the court for the allow-

ance of an appeal, the approval of said bond, and for an order of supersedeas, and will prosecute said appeal.

THE SINGER MANUFACTURING COMPANY,
By its solicitors, HILLYER & BRO.

We, the undersigned, do hereby acknowledge due and legal service of the above and foregoing original notice, and waive copy of the same, and also waive all other and further service or notice.

This 19 day of May, 1887.

CLIFFORD ANDERSON,
*Att'y Gen'l of Georgia, Sol. for Def'ts.*
L. P. THOMAS,
*Sheriff Fulton Co., Ga.*

Filed in clerk's office June 1st, 1887.

A. E. BUCK, *Clerk.*

76 *Petition for Appeal.*

In the Circuit Court of the United States for the Northern District of Georgia.

THE SINGER MANUFACTURING COMPANY
*versus*
WILLIAM A. WRIGHT, Comptroller General of Georgia, *et al.* } In Equity.

The petition of The Singer Manufacturing Company, the above-named complainant, respectfully shows that during the present term of this court, to wit, on the 9th and 10th days of the said month of May, 1887, the application for injunction in the above-stated cause was heard upon the bill and amendments and answers and affidavits filed in said cause, as follows, to wit: Affidavits of W. H. Saul, B. D. Armstrong, G. O. Penton, Wm. A. Griffith, and C. M. Tucker, each filed in office April the 2nd, 1887, and an affidavit of John Y. Dixon, filed 10th of May, 1887, by *nunc pro tunc* order as if and for the 15th of March, 1887, all of said affidavits having been filed by complainant; and the court, considering the said bill and amendments, answers and affidavits, and the application for injunction prayed for in said bill, afterwards, to wit, on the 18 day of
77 May, 1887, and the same amended and finally perfected on the 1st day of June, 1887, likewise, during the present term of said court, made and entered a final decree in said cause, whereby it was ordered and adjudged that the prayer for injunction aforesaid be denied and that said bill be dismissed with costs to be taxed against complainant by the clerk.

1. Your petitioner says that it is a person within the meaning in this regard of the Constitution of the United States and of the amendments thereto, especially the fourteenth amendment of the same, and within the meaning of the laws passed in pursuance thereof, that to

be exempt from the taxes, burdens, disabilities, penalties, and criminal prosecutions named and set out in complainant petitioner's said bill and amendments to said bill, notwithstanding said act of the General Assembly of the State of Georgia assented to December 22d, 1886, and sought to be imposed upon complainant by said act, as in complainant's bill and amendments more particularly mentioned and described, is a right, privilege, and immunity secured to complainant by the Constitution of the United States as aforesaid, and the suit in which said decree was rendered was brought on
78 account of the deprivation of petitioner of the said rights, privileges, and immunities so secured to it by the Constitution of the United States as aforesaid, and petitioner says that it was error in said court to deny such rights to complainant and to deny it the equal protection of the laws touching the said rights, privileges, and immunities.

2. Your petitioner further says that said act of the General Assembly of Georgia, more especially the 17th clause or subdivision of the second section of said act, does deny to your petitioner, who was and is a person within the jurisdiction of said State, the equal protection of the laws in manner and form aforesaid, and your petitioner claims that said court erred in holding and deciding that said act, and the State of Georgia by said act, does not deny or do not deny to your petitioner the equal protection of the laws, and petitioner claims that said court erred in holding and deciding that said act of the General Assembly of the State of Georgia is not repugnant to or violative of the fourteenth amendment to the Constitution of the United States and of complainant's rights under the same in manner and form as stated and set out in complainant's said bill and amendments thereto.

79 3. Your petitioner says that it is a citizen and is entitled to the rights of cititizenship of the United States in the particulars in said bill and amendments set out, and that said suit was and is brought on account of the deprivation of the rights and privileges of the same as aforesaid; and your petitioner claims that the court erred in holding and deciding that said tax act is not violative of nor in conflict with paragraph 3, section 8, article 1, of the Constitution of the United States, so far as respects complainant, as set out in the bill and amendments, and also in holding and deciding that the same is not violative of section 2, article 4, of the Constitution of the United States.

4. And your petitioner further claims that said court erred in holding and deciding that said tax act is not repugnant to nor violative of the first paragraph of the second section of the eighth article of the constitution of the State of Georgia and of complainant's rights under the same, as described and set out in the bill and amendments thereto, said provision of the State constitution being in the words following, to wit: "All taxation shall be uniform upon the same class of subjects, and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax,
80 and shall be levied and collected under general laws."

Your petitioner says that said tax act violates the rule of

uniformity required by said State constitution, and violates the requirement in said State constitution that all taxes shall be collected under general laws, said tax act imposing taxes, burdens, liabilities, and penalties upon complainant *and* not provided against or imposed upon other persons doing the same business and in the same situation and circumstances, and greater than any imposed on others, in manner and form as in complainant's suit set out, and the court erred as aforesaid in holding the contrary thereof.

5. And petitioner claims that it was error in said court to refuse the injunction and dismiss the bill in manner and form aforesaid.

6. And petitioner further claims that there are other errors involved with and committed in the judgment and decree of the court granted and entered against complainant as aforesaid, and, though insisted on, are not here more specifically mentioned or set out because the record and proof aforesaid disclose such errors.

Wherefore your petitioner, presenting the requisite bond and security and complying with all the forms of law touching the
81 same, prays the allowance of an appeal from said decree of said court to the Supreme Court of the United States.

Petitioner has in writing notified all the defendants of complainant's purpose to apply for this appeal, and petitioner prays that the same be allowed accordingly; and in duty bound, &c.

THE SINGER MANUFACTURING COMPANY,
By its att'y-in-fact, HENRY HILLYER.

Filed in clerk's office June 1st, 1887.

A. E. BUCK, *Clerk.*

*Bond.*

NORTHERN DISTRICT OF GEORGIA, } *ss:*

In the Circuit Court of the United States for the Northern District of Georgia.

THE SINGER MANUFACTURING COMPANY *vs.* WILLIAM A. WRIGHT, Comptroller General of Georgia, *et al.* } In Equity. Bill for Injunction, &c.

STATE OF GEORGIA, *Fulton County.* }

Know all men by these presents that the undersigned, The Singer Manufacturing Company, as principal, and Frederick M.
82 Scott, security, are held and firmly bound unto William A. Wright, comptroller general, and Lovick P. Thomas, the defendants in the above-stated cause, in the full sum of five hundred dollars, to be paid to them, their attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind

ourselves, our executors, administrators, jointly and severally, firmly by these presents, subject to conditions hereinafter named.

Sealed with our seals and dated this 1st day of June, 1887.

Whereas lately, at a session of the circuit court of the United States for the northern district of Georgia, in a suit depending in equity in said court between the said The Singer Manufacturing Company and William A. Wright, comptroller general; Lovick P. Thomas, sheriff, defendants as aforesaid, a final decree was rendered against the said complainant, The Singer Manufacturing Company, denying the injunction prayed for in said bill and dismissing the bill with costs; and the said complainant, The Singer Manufacturing Company, having obtained the allowance of an appeal and filed a copy thereof in the clerk's office of said court to reverse the said decree in the aforesaid suit, all of which was done in open court during the term of said court at which said decree was rendered, and,

83 on notice to said defendants, said appeal to be transmitted to the next Supreme Court of the United States, to be held at Washington on the second Monday of October next, in manner and form provided by law and according to the practice of the court:

Now, the condition of this obligation is such that if the said The Singer Manufacturing Company shall prosecute said appeal to effect and answer all damages and costs if it fail to make its said appeal good, then the above obligation to be void; else to remain in full force and virtue.

THE SINGER MANUFACTURING COMPANY,
By its att'y-in-fact, HENRY HILLYER. [SEAL.]
FREDERICK M. SCOTT, [SEAL.].
*Surety.*

Tested and approved by me in open court 1st June, 1887.
WM. T. NEWMAN,
*U. S. Judge.*

STATE OF GEORGIA, }
*Fulton County.* }

Before me in person came Frederick M. Scott, the surety to the above and foregoing bond, who, being duly sworn, says that he is worth the sum of five hundred dollars in good property liable for his debts, located in said northern district of Georgia, over and above all just debts and legal exemptions.

FREDERICK M. SCOTT.

Sworn to and subscribed before me this 1st day of June, 1887.
WM. T. NEWMAN,
*U. S. Judge.*

84 UNITED STATES OF AMERICA, }
*Southern District of New York.* }

Know all men by these presents that the undersigned, The Singer Manufacturing Company, a corporation created by the laws of the

State of New Jersey, but doing business and having its principal office in the State of New York, has made, constituted, and appointed, and by these presents does constitute and appoint, Charles G. Lambert and Henry Hillyer, both of the city of Atlanta, county of Fulton and State of Georgia, its true and lawful attorneys-in-fact, for it and in its name and stead to enter an appeal in the equity cause of the said The Singer Manufacturing Company *versus* William A. Wright, comptroller general of Georgia, and Lovick P. Thomas, sheriff of Fulton county, Georgia, bill for injunction and relief; to enter said appeal from the circuit court of the United States for the northern district of Georgia, where the decree was rendered, to the Supreme Court of the United States; to sign the application for said appeal; to make, execute, and sign its name to any bond which may be deemed necessary or as provided by law, and to do all else needful or appropriate for entering said appeal on behalf of the said The Singer Manufacturing Company and for rendering the same effectual; and the acts hereby authorized and con-
85 templated may be done by both of said attorneys or by either of them acting separately in the absence of the other, the said The Singer Manufacturing Company hereby ratifying and confirming the acts of said Charles G. Lambert and Henry Hillyer or either of them by virtue of this power of attorney — fully and completely and as if the said The Singer Manufacturing Company were present entering said appeal and itself signing, sealing, executing, and making said appeal bond.

In witness whereof the said The Singer Manufacturing Company hath hereunto caused its corporate name to be signed by W. F. Proctor, its vice-president, and hath hereto affixed its corporate seal this the 23 day of May, 1887.

THE SINGER MANUFACTURING CO.,
By W. F. PROCTOR, *Vice-Pres't.* [SEAL.]

Signed, sealed, and delivered in presence of—
EDGAR DAVIDSON.
MARK DUNNELL.

STATE OF NEW YORK, }
*City and County of New York,* } *ss:*

On this 23 day of May, A. D. 1887, before me came William F. Proctor, who is personally known to me to be the vice-president of "The Singer Manufacturing Company," the corporation named in the within instrument, who, being by me duly sworn, did depose and say that he resides in Sullivan county, in the State of
86 New York; that he is the vice-president of said corporation; that he knows the corporate seal of said corporation; that the seal to the foregoing instrument is such corporate seal, and was affixed thereto by him by order of the trustees of said corporation, and that he attested the same by subscribing his name thereto as such vice-president by like authority, the President being absent.

[SEAL.] EDGAR DAVIDSON,
*Notary Public, # 6, N. Y. Co.*

STATE OF NEW YORK, }
*City and County of New York,* } ss:

I, James A. Flack, clerk of the city and county of New York, and also clerk of the supreme court for said city and county, the same being a court of record, do hereby certify that Edgar Davidson, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was at the time of taking such proof or acknowledgment a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn, and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said
87 certificate of proof or acknowledg*ed* is genuine.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of the said court and county the 24 day of May, 1887.

JAMES A. FLACK, *Clerk.*

Filed in clerk's office June 1, 1887.

A. E. BUCK, *Clerk.*

*Order Allowing Appeal.*

In the Circuit Court of the United States for the Northern District of Georgia.

The appeal prayed for in the foregoing petition is hereby allowed, and it is ordered that the petitioner be allowed an appeal accordingly upon executing a bond in the penal sum of five hundred dollars; which said bond is now filed and approved by the court in open court during the regular term thereof at which said decree was signed and entered of record; which said appeal and bond will operate as a supersedeas in this cause.

It is further ordered that the evidence in writing of the service of notice upon defendants by petitioner for appeal of its purpose to appeal be entered of record in this cause as the same now appears exhibited to this court, and that the clerk transmit said appeal with transcript of the record and of the affidavits aforesaid, together with the written opinion delivered by the presiding judge in connection with the decree and filed of record in the cause, to the next
88 term of the Supreme Court of the United States in manner and form as prescribed by law.

In open court, January 1st, 1887.

WM. T. NEWMAN,
*U. S. Judge.*

Filed in clerk's office June 1st, 1887.

A. E. BUCK, *Clerk.*

Office Supreme Court U. S.
FILED,
APR 28 1891
JAMES H. McKENNEY,

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 69.

SINGER MANUFACTURING COMPANY,
*Appellant,*

*vs.*

WILLIAM A. WRIGHT, Comptroller-General of the State of Georgia, and LOVICK P. THOMAS, Sheriff of Fulton County, Georgia.

## BRIEF ON BEHALF OF APPELLANT, SUBMITTED UNDER DIRECTION OF THE COURT MADE APRIL 14, 1891.

GROSVENOR LOWREY,
JOSEPH S. AUERBACH,
*Of Counsel for Appellant,*

C. G. Burgoyne, Walker and Centre Sts., N. Y.

# Supreme Court of the United States.

OCTOBER TERM, 1890.

SINGER MANUFACTURING COMPANY, Appellant,

AGAINST

WILLIAM A. WRIGHT, Comptroller-General of the State of Georgia, and LOVICK P. THOMAS, Sheriff of Fulton County, Georgia.

No. 69.

**Mr. Lowrey's Brief on Behalf of Appellant —Submitted under direction of the Court, made April 14, 1891.**

This brief is supplementary to that of Mr. Hillyer, for the appellant. It is submitted for the single purpose of discussing the rights of the appellant, a corporation of New Jersey, under the so-called Commerce clause of the Federal Constitution (Sub. 3, Sec. 8, Art. I.), to export and freely sell in other States of the Federal Union, sewing machines made by it in New Jersey; and conversely, of considering the right of the State of Georgia to impose, in respect of such business, the conditions expressed in that part of the Georgia Tax Act set forth on page 2 of the printed Transcript of Record.

By that act, "every *sewing machine company* selling

or dealing in sewing machines, by itself or its agents," and every *wholesale dealer* selling machines manufactured by companies that have not paid the tax, must pay "two hundred dollars for each fiscal year or fractional part thereof * * * *at the time of commencement of business;*" and also, "the sum of ten dollars for each of their agents in each county for each fiscal year," &c., under penalty for nonpayment that "all sewing machines belonging to such companies * * * shall be liable to seizure and sale for the payment of such license fees and tax," and that "any person who shall violate the provisions of this section" shall be liable to indictment and to punishment by fine or imprisonment.

It is manifest that the words of the statute are naturally and easily construable so as to apply only to State companies, who by reason of deriving franchises from the State, and not being exempted by any exception contained in the Federal Constitution, are confessedly within the State power of taxation, as well in their business as in their protected property.

But the Comptroller of Georgia reads the statute otherwise; and has construed it as applying to nonresident companies whose only connection with Georgia is that they send their foreign made goods into that State for sale (pp. 1, 29, of Trans. of Rec.) or to satisfy sales already made (p. 30 of Trans. of Rec., near the foot); and he has directed the Sheriff to collect the tax as a condition precedent, of course, to "the commencement of business." Just at what stage of this business it is to be considered "commenced," for the purposes of this act, we do not know—whether when goods are carried across the line, with purpose of sale, or whether when actually offered for sale. Whenever it is, any person who shall have done the act which commences business, before the payment referred to, is liable to conviction, fine and imprisonment.

It is thus officially claimed that the importation of

machines into the State of Georgia by the appellant, with the intention of selling the same, or of filling orders already given, subjects it to an immediate obligation to the State for a sum of money; and to a seizure of its goods for the satisfaction of that claim—*whether sales are made or not*. It is, therefore, a price prepaid for a privilege to carry on the indicated business in any form—by drummers selling by samples—and by all other methods.

Against this action the appellant invokes the protection of the Federal Constitution, and points out, as the clauses upon which—in addition to the Constitution of the State of Georgia—it relies for guaranties against what it regards as spoliation, paragraph 3 of Section 8 of Article I., and the Fourteenth Amendment, as follows:

> SEC. 8. The Congress shall have power * * *
> To regulate commerce with foreign nations, and among the several States * * *"

And the Fourteenth Amendment, as follows:

> No State shall make * * * any law which shall abridge the privileges or immunities of citizens of the United States. * * *"

Only the clause first quoted will be discussed in this brief.

The injunction prayed for to restrain the collection of this tax was refused, and the bill dismissed on the ground that the Legislature of Georgia has the right for purposes of taxation to classify occupations carried on within the State; and in so doing to include sewing machine companies who cause their imported machines to be sold there either by wholesale or retail, in one taxable class; wholesale dealers in another class and retail dealers in still another class which is not taxed, thus applying the taxing power to retail dealers who are companies and withholding it from all retail dealers who are not companies.

The Circuit Court says:

"But complainant says that it sells in Georgia exclusively to consumers or users—in other words, does a retail business entirely—and that there are a large number of other retail dealers, individuals and firms that are not taxed. I see no reason why the State may not *fail to tax* certain classes of business" (p. 34, Trans. of Rec.; and see also pp. 4, 13, 23, 29 and 30, at foot of page).

After this exposition of that Court's idea of what would constitute uniformity in taxation, no further reference is made to the doctrine hereafter to be considered, that State legislation which does not discriminate unfavorably against citizens of other States, but subjects them to equal burdens with citizens of the taxing State, is a valid exercise of the reserved taxing power of the State. The assertion of that doctrine will doubtless be heard here, however, accompanied by the argument that sewing machine companies of *Georgia* (whether any now exist or not), are (or will be) subject to the same tax as the appellant; and, therefore, that there is no discrimination and no infraction of any Federal guaranty, which the appellant, as an out-State manufacturer and interstate "dealer," has the right to claim.

To sustain such an argument in this particular case, there should have been proof that there are companies organized or located in the State of Georgia, which make or deal in sewing machines, if such is the fact. There is no natural order or established custom out of which a presumption springs that sewing machines are manufactured in Georgia. Probably the presumption is otherwise, especially in aid of a statute imposing personal penalties. Doubtless all the parties to the litigation were led by their common knowledge that there are no such manufacturing or dealing companies in the State of Georgia, to take this as a fact by common consent; and, therefore, the case is lacking in proof on that point.

The Court says (p. 31):

"The language of the act is certainly broad enough to cover all the sewing machine companies, whether the company be of this State or of another State. * * * The fact, and probably such is the fact, *that no sewing machines are manufactured in this State*, cannot change the matter if the language of the Tax Act embraces such manufactories as now, *or hereafter, during the operation of the law*, may be in the State."

The only proof bearing on this point, seems to indicate that none of the sewing machine companies are "dealers" within the State except to *sell*. The only statutory reference to manufacturing—a very imperfect reference, it is true—is as follows: "Wholesale dealers * * * selling sewing machines *manufactured by companies* that have not paid," &c., and it perhaps favors the inference that only "companies" manufacture,—anywhere. Since, then, companies only *sell* in Georgia, it results that no manufacturing is done there by any one. It is clear enough from the whole case, that all companies doing business in the State are foreign; and that the only business they do there up to this time is to sell what they make elsewhere.

We shall assume from the whole case that sewing machines are, as yet, no more a product of Georgia than cotton is a product of New Jersey; and shall claim that a sewing machine in its organized form is (within the common sense of the term) as much an "original package" of imported goods in Georgia, as would be a bale of cotton in New Jersey; and that a Georgia tax on sales of sewing machines (without discrimination in favor of those made in Georgia), is virtually like a New Jersey tax on sales of baled cotton (without discrimination in favor of the crop of that State) would be—a delusion and a snare.

Certain propositions covering this case may be deduced from the decisions of this Court and postulated as follows:

That a State may tax its own citizens for the

prosecution of any particular business within the State ;

That when citizens of other States prosecute occupations within such taxing State, they must submit to a fair and undiscriminating application of such State laws, and only to such ;

That whether exerted upon residents or non-residents, citizens or aliens, neither the power of the State to tax, nor any of its large police powers, can be permitted to work a *practical* assumption of the powers conferred by the Constitution of the United States on Congress.

*Hannibal vs. Husen*, 95 U. S., 465, and other cases cited below.

The undisputed facts to which these axioms apply are :

That the appellant is a corporation foreign to Georgia ;

That it ships to and sells in that State sewing machines constructed in New Jersey ;

That the sole mode of its business is to sell at retail, *i. e.*, by offering single machines to single purchasers for use ; and

That there are many retail dealers in the State who, not being sewing machine companies or wholesale dealers, pay no tax.

The questions arising under this state of law and fact are :

Does the statute in question, as interpreted by the defendant and applied to the complainant, operate as a regulation of interstate commerce ?

And, assuming that Georgia does not discriminate unfairly between the appellant and other resident retail dealers, is such a regulation valid ?

Does the act discriminate unfairly between appellant

and other retail dealers; and if so, what is the effect of that discrimination on provisions otherwise valid?

May such a tax be in any case imposed so long as no action on the subject has been taken by Congress?

The last question is believed to require no attention, in view of recent and very clear utterances of this Court, holding that the absence of regulation by Congress is tantamount to a declaration that the subject shall be free.

The third is also settled without dispute by numerous cases declaring that discrimination in such matters if it exists is fatal to a State law.

Under the first and second questions, we are compelled at once to meet decisions in this Court, one of which with absolute directness and others by more or less clear inference, seem to uphold the idea that taxes on interstate sales or on the business of selling goods of out-State production, *may* be valid if like taxes are also collected on sales of like goods produced in the State.

Thus in *Howe Machine Co. vs. Gage*, 100 U. S., 676, it was held, that a Tennessee tax on peddlers of sewing machines which applied alike to peddlers of sewing machines, made in the State and out of it, was not repugnant to the constitutional clause in question.

At the same term of the Court, in *Guy vs. Baltimore*, *Ibid.* 434, it was said that no State can, consistently with the Constitution of the United States, impose upon the products of other States brought therein for sale or use, or upon citizens because of their being engaged in the sale thereof, or in the transportation thereto of the products of other States, *more onerous burdens than it imposes upon the like products of its* territory.

In *Woodruff vs. Parham*, 8 Wall., 123, which was relied on in the last case, a collection of taxes for the sale at auction in Alabama of goods brought from another State, such taxes being imposed alike on all

sales, whether of the produce of that or other States, was held good.

At the same term with *Woodruff vs. Parham*, in *Hinson vs. Lot*, a State tax on the introduction of spirituous liquors was upheld against a strong dissenting opinion by NELSON, J. (which, by subsequent decisions, appears to have been right), because the same tax had been imposed on liquors of State production. Sporadic appearances of this doctrine, by which *incursions upon the exclusiveness of Congressional powers* to regulate, &c. were *seemingly condoned*, are occasionally seen in subsequent cases which will be referred to. The impelling motive was, of course, an anxious and patriotic desire to respect the reserved powers of States. The doctrine begins to disappear again after *Guy vs. Baltimore*—until finally, all recent decisions rest once more on the broad but simple foundation laid by Chief-Justice MARSHALL in *Brown vs. Maryland*, which is, substantially, that the regulation of foreign and interstate commerce is expressly abandoned by the States and exclusively lodged with the Congress; and that all State regulations of that subject are absolutely void—*because* they regulate.

## History of the Mischief, and of the Constitutional Remedy.

It will be profitable, first, to review briefly the mischiefs which led to the abandonment of the Confederation and the adoption of the Constitution. For, says Mr. Madison:

* * * The defects, the deformities, the diseases and the ominous prospects for which the convention were to provide a remedy * * * *ought never to be overlooked* in expounding and appreciating the Constitutional charter—the remedy which was provided." 5 Elliott, 119.

Commerce in general, and its needs were the conspicuous and only professed occasion for the call of the

States to the Federal Convention of 1787. Doubtless the grievous condition of foreign commerce and the inability of the Confederation to make and enforce treaties with foreign nations, more than irritating and annoying interstate regulations, led Virginia to recommend the first Convention at Annapolis. The address of the Annapolis Convention of September 14, 1786, to the States, mentions, as a reason why the Commissioners separated without considering any amendments to the Articles of Confederation—that having met and proceeded to a communication of the powers of the delegates, they found that most of the States had in substance, and in nearly the same terms, "authorized their respective Commissioners * * * to take into consideration the trade and commerce of the United States; to consider how far a uniform system in their commercial intercourse might be necessary to their common interest and permanent harmony; and to report to the several States such an act relative to this great object as * * * would enable the United States and Congress assembled effectually to provide for the same;" but "that the State of New Jersey had enlarged the object of their appointment, empowering their Commissioners to consider how far a uniform system in their commercial regulations and *other important matters* might be necessary," etc. And the Commissioners add that they "did not conceive it advisable to proceed on the business of their mission, * * *," and they "recommend speedy measures * * * to effect a general meeting of the States * * * for the same and such other purposes as the situation of public affairs may require." They submit the opinion "that the idea of extending the powers of the deputies to other objects than those of commerce, which has been adopted by the State of New Jersey, was an improvement on the original plan," and that "they have been induced to think that the power of regulating trade is

of such comprehensive extent and will enter so far into the general system of the Federal Government that to give it efficacy, and to obviate questions and doubts concerning its precise nature and limits, may require a corresponding adjustment of other parts of the Federal system" (I. Elliot's Debates, p. 117).

Out of a defective system of interstate and foreign commercial regulation, therefore, grew the movement which ended in the present Constitution, and for the moment no other motive was seen, or at least, expressed. So far as interstate relations were concerned, the Articles of Confederation gave to the appellant exactly the rights which the Statute of Georgia, as interpreted, now provides; that is, equal rights, with like immunities and obligations, whether the persons trading, or the things traded in, were of the taxing State or of another.

Article IV. of the Articles of Confederation provided that—

"the better to secure and perpetuate mutual friendship and intercourse among the people of the different States of this Union, the free inhabitants of each of these States * * * shall be entitled to all the privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and egress to and from any other State, and *shall enjoy therein all the privileges of trade and commerce*, subject to the *same duties, impositions and restrictions as the inhabitants thereof* respectively" (I. Elliot's Debates, 79).

An ineffectual effort was made in the Congress of the Confederation of 1785 to amend this article, and that body pathetically appealed to the States to be empowered for a term of years to levy at all ports an impost duty on foreign goods; a request which was not unanimously conceded, and the failure of which made other measures necessary for the salvation of the new Union. It is startling to consider what might have been the consequence had that temporary power been granted, and that amendment made. Pressing demands being thus temporarily provided for, and threatening dangers to commerce wholly or partially averted, the

need for a more perfect union might have been less clear to the people. A wide field for conjecture is opened as to the effect on the national spirit of a few years' delay at that formative and critical period. The commercial clause of the Constitution, now under consideration, by breaking down barriers to free intercourse of the people of all the States as people of one nation, fostered the growth of that homogeneity which stayed the spread of secession, and has rendered the present cordial re-union possible.

But the proposed amendment to the Articles did not succeed, the impost was refused, the wrongs to free commerce remained unredressed, and the Federal Convention was called.

Mr. Madison, in pointing out the sources of dissatisfaction with the Confederation, mentions

"the peculiar situation of some of the States which, having no convenient ports for foreign commerce were subject to be taxed by their neighbors, through whose ports their commerce was carried on. New Jersey, placed between Philadelphia and New York, was likened to a cask tapped at both ends; and North Carolina, between Virginia and South Carolina, to a patient bleeding at both arms. The Articles of Confederation produced a strong protest on the part of New Jersey, and never ceased to be a source of dissatisfaction and discord until the new Constitution superseded the old" (Madison Papers, V. Elliot's Debates, 112).

The preamble to the law adopted by the Legislature of Virginia, in compliance with the recommendation of the Annapolis Convention said:

"The General Assembly of the Commonwealth, taking into view the actual situation of the Confederacy * * * can no longer doubt that the crisis has arrived at which the good people of America are to decide the solemn question whether they will, by wise and magnanimous efforts, reap the just fruits of that independence which they have so gloriously acquired, and of that union which they have cemented with so much of their common blood; or whether, by giving way to unmanly jealousies and prejudices, or to *partial and transitory interests*, they will renounce the auspicious blessings prepared for them by the Revolution. * * * *" (*Ib.*, p. 116.)

When the Federal Convention was assembled, Mr. Randolph opened the main business, and, speaking of the defects of the Confederation, said he "professed

high respect for its authors, and considered them as having done all that patriots could do in the then infancy of the science of constitutions and of confederacies; when the inefficiency of requisitions was unknown, and *no commercial discord had arisen among States*, etc." Thus the first defect in the Confederation to reveal itself was want of revenue; and the second, the liability to selfish commercial restrictions by the States under the influence of "partial and transitory interests."

It is needless, and would unduly extend this brief review, to recount all the ways by which the States, fresh from the generous self-sacrifice of the Revolution, irritated and annoyed each other, and endangered their imperfect union.

Mr. Madison says (Madison Papers, V. Elliot, 119):

"Besides the vain attempts to supply their respective treasuries by imposts, the States having ports for foreign commerce taxed and irritated the adjoining States trading with them, as New York, Pennsylvania, Virginia and South Carolina. Some of the States, as Connecticut and South Carolina, taxed imports from others, as from Massachusetts, which complained in a letter to the Executive of Virginia and sundry other States. In sundry instances, as of New York, New Jersey, Pennsylvania and Maryland, the navigation laws treated citizens of other States as aliens."

New Jersey levied a duty of four pence per gallon on New England rum; 5 per cent. *ad valorem* on wrought iron and steel, of which New England then made a good deal; and in strict analogy to the Georgia Act under consideration, collected £200 for a license to deal in these imported articles. North Carolina levied a duty on all goods imported by land or water (Laws of N. C., 1784, C. 3).

Connecticut and Massachusetts imposed a duty on the importation of all sugar, whether the product or manufacture of the United States or not (New Haven Session, Oct., 1784).

New York consumed the poor profits of hucksters from New Jersey and Connecticut, bringing vegetable supplies to its daily market, by requiring them to

enter and clear at its Custom House (N. Y. Laws of 1787, Ch. 81, Republished 1886); to which Connecticut responded by a practical non-intercourse act for a year; and New Jersey by a tax of fifty pounds per year upon ground at Sandy Hook on which the New York light-house was erected (McMaster's History of the People of the United States, Vol. 1, p. 404). In the convention Mr. Williamson, of North Carolina (5th Elliot's Debates, p. 454), declared that Virginia had taken taxes from North Carolina on 12,000 hogsheads of tobacco, which were necessarily carried across the border for shipment at Virginia ports.

Nor did the adoption of the Constitution at once eradicate the narrow and shortsighted views of policy to which some kinds of politics naturally tend.

New York had in 1787 granted to John Fitch the exclusive right to navigate her waters by steam, and that grant, repeated from time to time by laws passed after the adoption of the Constitution, eventuated in the case of *Gibbons vs. Ogden*. The same disposition has from time to time resulted in various forms of tax upon the privilege of doing business, sometimes openly aimed at the citizens of other States, as in *Welton vs. Missouri*, 91 U. S., 275, and sometimes covertly, as in the case now before this Court.

The following from a recent number of the "New York Sun," refers to a city ordinance of New York which, however intended, seems to operate harshly against Southern farmers and market gardeners. Whether the enactment be a lawful exercise of police powers with commercial incidents, or a burdensome regulation of commerce pure and simple, it illustrates a surviving tendency to subsist on the stranger.

"The Aldermen's Committee on Markets gave a final hearing yesterday to the opponents and advocates of the ordinance requiring that fruit and vegetables be sold by weight. The opponents of the scheme were backed up by a delegation of Virginia truck farmers, headed by Col. William Lamb, which had been sent up to New York by the Churchland Grange of Norfolk County, to prove to the Committee that it was an absolute impossibility to weigh the

thousands of packages of produce sent every day to New York. The measure would drive these truck farmers to other markets. Several letters were presented from railroad freight agents, all agreeing that the weighing of produce by the producer was impracticable."

## This case involves fundamental political rights of Georgia citizens as well as New Jersey citizens.

In dealing with license fees of this sort upon interstate trading, we are brought face to face with fundamental political rights of citizens of the United States, assailed by the agent of a State sovereignty in which one party is a constituent, and seeking protection from another agent of a Federal sovereignty in which both parties are constituents (*Robbins vs. Taxing Dist.*, 120 U. S., 496).

The specific grievance here is that of a New Jersey producer and a Georgia consumer, jointly. The production is a useful and almost indispensable article in household economy throughout the civilized world. The producing mechanic has put his labor, capital, ingenuity, credit and skill into this article which thereafter stands as sign and representative of that investment, and of the daily bread, household protection, education of children and thrifty accumulation which are the objects of his labor. This article he sends to Georgia, where it is wanted by another citizen of the nation resident there, a joint participant in a compact by which it is provided that the State of neither party shall interfere in their intercourse across the border; exclusive power over that subject having been vested in a common representative, Congress. The article having arrived in the State of Georgia, and the moment come when the labor and products of the Georgian are to procure for him the needed convenience, and the labor of the New Jerseyman is to receive the compensation which is its due, an obstacle arises. No pur-

chase and sale, *or negotiation therefor*, can take place unless the New Jersey contributor to this interstate traffic has prepaid to the State of Georgia a fee of two hundred dollars and a corresponding fee of ten dollars for every agent employed. Moreover, the trade and commerce proposed is virtually declared criminal unless these fees are prepaid; and five years' imprisonment is nounced against whoever shall violate the provisions of the act.

All this is justified solely on the ground that the right to tax all persons, property and business within its borders has been reserved by each State. When it is pointed out that the exercise of this reserved power operates in this case to disturb the exclusiveness of the paramount power of Congress, it is answered that Georgia makes the demand upon her own citizens; and that, therefore, the usurpation is to be *excused*. This argument is supported expressly by one case not yet expressly overruled (*Machine Co. vs. Gage*); and inferentially by other cases already referred to as expressing doctrines tending to uphold it, but which are nevertheless incompatible with principle and with numerous later cases.

## A time has arrived when this Court should unconditionally declare the invalidity of all State enactments which burden transactions of Interstate Commerce.

It is believed that a point has now been reached in the judicial development and settlement of questions arising under the commerce clause, when it may be confidently asserted that any State law which restrains the free disposition within its territory of the products of another State or foreign nation not yet within any reasonable interpretation of those words, "become mixed with the general mass of goods of the State," will

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be held invalid in this Court. We leave out of account, of course, as unnecessary to the discussion, questions arising under the exercise of police powers, and also all questions whether there is here a denial " to citizens of each State all the privileges and immunities of citizens of the several States ;" limiting ourselves solely to the case of a State tax law which, in fact, *regulates* interstate commerce, by imposing a tax upon it *as commerce* without the permission of Congress.

## " Uniform Regulation " and " Discrimination," and their value as Elements of Judgment, considered."

The motive usually ascribed for granting to Congress exclusive power over this subject was the necessity for what is called " uniform regulation." Where the subject does not admit of uniform regulation, that is, of a regulation having the same force and effect everywhere throughout the Union, the power has been treated as concurrent, or as exclusive only when exercised. Such is the case where local circumstances—quarantine, pilotage, harbor dues, bridging of navigable waters, etc., have had a bearing on commerce. From this has arisen a mistaken use—in unlike cases—of the idea of uniformity. And in a series of judgments (beginning with *Woodruff vs. Parham*, but now ended) " national uniformity " and internal State " discrimination " are treated as if they were true correlatives. Where there is *such* discrimination, it has been assumed that there is a failure of *such* uniformity, and *vice versa*. And " uniformity " is by this line of argument, treated as if it were a condition guaranteed *by the commerce clause ;* and " discrimination," is treated as a political vice inhibited by that clause.

This line of argument is, by the light derivable from the later cases cited below, seen to be founded on the use of false *criteria*. Uniformity between burdens borne

within a State by domestic and foreign goods is one thing; and uniformity throughout the Union, by which like goods bear like burdens, as a condition of commercial entry and disposition in every State to which they go from the State of origin, is quite another thing. Neither of these is, under the clause in question, a constitutional criterion; though the latter is an ensuing incident of the uniform enforcement of that separate and exclusive control which the Constitution gives to Congress. We respectfully submit that unjust discrimination by a State law against the goods of other States does not authorize us to denounce the law as being contrary to the commerce clause; and that if such a law does contravene or infringe the exclusiveness of Congressional power granted by that clause, the fact that it does not "discriminate" unfairly, will not purge it. The one kind of uniformity results naturally from the exercise of exclusive power by one common authority throughout all the States; and the other kind of uniformity results from the enforcement of equal regulations upon certain subjects within a State. The exclusiveness of Congressional authority being maintained, that uniformity which was the motive for creating it, will ensue as matter of course. The other kind of uniformity is not a subject of national concern, so *far as that concern is expressed in the commerce clause.* If any law offends that clause it will not be because it discriminates, but because it *regulates.* A remedy is found in other parts of the Constitution, and its amendments, when unlawful discrimination is exerted against persons. To those alone, and not to any balancing of exclusive National jurisdiction against interfering State action, must we logically look when that action in fact operates to burden interstate commerce.

The object of this brief being limited, we do not pursue further the demonstration that State discrimination,

when it exists, finds its condemnation and remedy elsewhere than in the commerce clause.

A true idea of that uniformity which the Constitution is to conserve implies, not that the Georgia sewing woman shall be able to buy a New Jersey machine on as good terms (so far as State taxes influence the price) from the traveling agent of the company as from the local trader, but that every sewing woman in every State shall be able to obtain her machine (so far as State action is concerned) on as good terms as any other woman in any other State.

The New Jersey manufacturer of sewing machines and the Florida exporter of oranges are entitled to find the path to the customer equally free in *all* States to which their respective products are taken. Such uniformity, which may be called national uniformity, results directly from due adherence to the doctrine that all taxes on acts of commerce are regulations; that all regulation of interstate commerce is vested exclusively in Congress; and that non-regulation by that body imports freedom in the non-regulated subject.

To test, therefore, the constitutional rights of these persons to the benefits of free traffic, by the existence or non-existence of uniformity inside a single State, is to apply a spurious and misleading criterion.

A clear definition, which supports the views here expressed, is given by Mr. Justice FIELD in County of Mobile vs. Kimball, 102 U. S., page 697:

> "The subjects, indeed, upon which Congress can act under this power are of infinite variety. * * * Some of them are national in their character, and admit and require a uniformity of regulation *affecting alike all the States;* others are local or are mere aids to commerce, and can only be properly regulated by provisions adapted to their special circumstances and localities. Of the former class may be mentioned all that portion of commerce with foreign countries or between the States which consists in * * * sale and exchange of commodities. *Here there can of necessity be only one system or plan of regulations, and that Congress alone can prescribe.* * * * There would otherwise be no security against conflicting regulations of different States."

## Property Tax Contrasted with Taxes on the Privilege of Selling.

Considered as property, sewing machines of foreign origin are, of course, taxable in Georgia—having due regard to the terms of its own fundamental law—like all other property (*Brown vs. Houston*, 114 U. S., 633) and the case shows (p. 4, Transcript of Record) that we pay taxes in Georgia on all our property there. So also the man whose business it is to sell them is taxable, like any other person who permanently or temporarily carries on a taxed occupation. But all this is to be understood with the qualification that these conceded powers are always to be taken with an *absque hoc*, that *no tax* is valid, *however expressed or intended*, which *operates* to *burden, regulate or render less than perfectly free* the business of *selling in any one State* the *products of another* State or of foreign countries, which yet remain within the meaning of the cases "unmixed with the general mass, &c."

*Hannibal vs. Husen*, 95 U. S., 465.
*Fargo vs. Michigan*, 121 U. S., 230.

In Brown vs. Maryland, 12 Wheat., Chief-Justice MARSHALL said: "It is true that the State may tax occupation," adding, that this is a tax on the business; and continuing, * * * "This the State may do, because no constitutional prohibition extends to it. So a tax on the occupation of an importer is in like manner a tax on importation. * * * This the State has no right to do, because it is prohibited by the Constitution." And elsewhere, p. 448, "We admit this power (the State power to tax) is sacred. * * * *We cannot admit that it may be so used as to obstruct or defeat the power to regulate commerce.*" And it is to be noticed that the learned Chief-Justice does *not* add, "unless it treats aliens and its own citizens alike, in which case it *may* be so used." In the same case, at p. 439, he said:

"There is no difference in the effect between a power to prohibit the sale of an article and a power to prohibit its introduction;" * * * and he approved the contention that "the importer purchases by the payment of duty to the United States the right to *dispose* of his merchandise." The same right has in perpetuity been interchangeably granted and accepted between each and all the citizens of the United States, by an eternal compact founded on the expenditure of their commingled blood and treasure.

**Our machines are "original packages," and the objectionable tax is levied on the privilege to mix them with the general goods, &c., by one sale.**

We do not overlook the essential fact that the goods sold in *Brown vs. Maryland* were still in the condition in which they were imported—that is, in "original packages." The reason for limiting the application of the law of that and subsequent instances of a tax on original packages was obviously, because after packages have been broken and their contents dispersed, the controlling *indicia* of foreign origin are lost or obscured; and all certainty that the goods have not already passed by one sale within the State into the mass of State property, is impossible. If one such sale has taken place, then the constitutional right to sell what has been imported is satisfied; and subsequent transactions in respect to such goods are transactions of domestic trade. There is, of course, no legal distinction between packed and unpacked foreign goods in respect of the owners' right to sell them, free from State burdens. But arbitrary reasons of convenience have limited the benefits of constitutional protection to goods whose condition can be appealed to, to furnish some evidence that they are imported goods, which have not yet become State goods.

A sewing machine is something easily identified. Each machine without exception bears its own number, with marks showing who made it, and usually where it was made. This is probably known to every one. It cannot be known, for the record does not show, in what condition as to packing the complainant's machines are introduced into the State of Georgia, that is, whether boxed for transportation in numbers or singly, or whether boxed at all. Nor does it appear that such change, if it takes place, does so until the buyer makes that change. That some protection from injury by handling is resorted to, and that that is a cheap wooden crate, is probable, though not proved. And even if that crate were wholly removed on reaching the general storehouse in Georgia—if there be such a storehouse—is not material in any rational sense. If the machine should pass the State line in a storm, protected by a rubber covering, the withdrawal of the covering on return of fair weather should as much tend to merge the machine in the mass of State property, and take from the foreign owner the free right to sell what he had free right to import, as would the removal of a wooden crate serving the same purpose, not a part of the machine and not introduced for sale. And yet no one would claim such a legal result from such a circumstance.

This Court has given us some expressions which indicate when and how and by what acts an object of foreign commerce ceases to be such, and becomes only an object of State trade.

It was said in Welton vs. Missouri, 91 U. S., 275:

"The power which insures uniformity of commercial regulation must cover the property * * * until it has mingled with and become a part of the general property of the country and subjected like it to similar protection *and to no greater burdens*.

"And the Court (referring to the decision of Brown vs. Maryland), after observing that it might be premature to state a rule as being universal in its application, held, that when the importer had so acted upon the thing imported that it had become incorporated

and mixed up with the mass of property in the country, it had lost its distinctive character as an import. * * *"

In Brown vs. Maryland, 12 Wheat., p. 438, it was said:

"No object of any description can be accomplished by laying a duty on importation which may not be accomplished with equal certainty by laying the duty on the thing imported in the hands of the importer.

"When the importer has so acted upon the thing imported that it has become incorporated and mixed up with the mass of property in the country, it has perhaps lost its distinctive character as an import, and has become subject to the taxing power of the State; but while remaining the property of the importer, in his warehouse, in the original form or package in which it was imported, a tax upon it, &c.

"This state of things is changed if he sells them or otherwise mixes them with the general property of the State by breaking up his packages and traveling with them as an itinerant peddler."

In estimating the just value to be put at the present time upon the last sentence just quoted, the Court will doubtless observe that the Maryland indictment charged the importation and sale of one package of foreign dry goods without license. Foreign dry goods, when once out of their original importers' package and in the hands of the "peddler" of the times, no power short of omniscience could trace and distinguish them. An importer who allowed this was therefore properly thought to have so acted upon his goods as to erase the sign of their foreign origin and estop himself from denying that they are merged in the general mass, &c. But the itinerant peddler has been succeeded by the traveling salesman and drummer, and interstate commerce has almost entirely passed into their hands. They have their depots of supply in the State, or near it, and penetrate the land offering the goods—sometimes by sample. Transportation cannot be concealed. The whole business is open and traceable. Instead of in private wagons it takes place by railways and steamboats, by aid of bills of lading, etc., and the identity of goods is easily shown. The reasons why the breaking of an

original package of dry goods and dispensing the contents among itinerant peddlers for sale was deemed, in 1827, a sufficient sign of merger in the mass of domestic goods of the country, and abandonment of rights founded on their foreign origin, are obviously not reasons when applied in 1887 to the introduction of marked and numbered sewing machines (boxed or unboxed) to be stored in a warehouse and drawn thence to be offered for sale or delivered in satisfaction of sales.

In Waring vs. The Mayor, 8 Wall., 110, a tax was levied upon gross amount of all sales made by merchants. Complainants bought imported salt from the original consignees, buying it while at sea or in the lower harbor of Mobile, and reselling the same in the original packages in which imported. Held, that the tax was valid. "Merchandise in the original packages once sold by the importer is taxable as other property."

In Pervear vs. Comm., 3 Wall., p. 479, it was said:

"Even in the case of importation, that circumstance is only available to the importer. Merchandise in original packages once sold by the importer is taxable as other property."

The License cases, 5 How., p. 575, Ch. J. TANEY says:

"Indeed, goods imported, while they remain in the hands of the importer, in the form and shape in which they were brought into the country, can in no just sense be regarded as a part of that mass of property in the State usually taxed for the support of the State government."

In Mr. Justice McLEAN's opinion, in Thurlow vs. Mass., 5 How., p. 589, he says:

"After the import shall have passed out of the hands of the importer, whether it remain in the original package or cask or be broken up, it becomes mingled with other property in the State, and is subject to its laws."

In Mr. Justice CATRON's opinion in Thurlow vs. Mass. 5 How., p. 610, he says:

"And when the article passes by sale from the hands of the importer into the hands of another, either for the purposes of resale or

of consumption, or is divided into smaller quantities by breaking up the casks, packages, etc., by the importer, the article ceases to be a protected import, &c."

Collins vs. Hill, 77 Iowa, 181:

"The fact that as a matter of convenience in handling during the transportation of the property, the bottles were packed in boxes or barrels, can make no difference as to the character, in law, of the transaction. If he had the right to bring the liquor within the State to sell it here, he had the right to adopt such means and mode of shipment as best suited his convenience or interest. * * * The right to buy and sell in such quantities as he chose is necessarily included in the right to buy and sell in any quantity."

In Leisy vs. Hardin, 135 U. S., 124, it was said:

"They had the right to import this beer into that State, and in the view which we have expressed they had the right to sell it, by which alone it would become mingled in the common mass of property within the State."

## No Exemption from Property Tax is Sought.

It will be understood that we do not claim—notwithstanding many expressions in the decisions of this Court which might be cited to support such a claim—that our machines may not be taxed in Georgia as property receiving protection, as the coal was taxed in Brown vs. Houston, 114 U. S., 622. We pay that tax now without complaint (Record, pp. 4, 29). We only object to paying a State tax as compensation for a State privilege of trying to sell in Georgia that which Federal authority has permitted us to introduce from New Jersey.

## Authorities which Virtually Eliminate "Discrimination" as an Element of Judgment Considered.

We now proceed to a brief consideration of recent decisions of this Court, which seem to eliminate State discrimination as an element of judgment in determin-

ing whether a State law is void or valid under the Commerce clause.

In McCall vs. California, 136 U. S., 108, LAMAR, J., said, quoting with approval from Lyng vs. Michigan:

"No State has the right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, *for the reason* that such taxation is a burden on that commerce, and amounts to a regulation of it, which belongs solely to Congress."

Citing (page 109) Robbins vs. Shelby Taxing District, 120 U. S., LAMAR, J., says:

"This Court decided that a soliciting of business by the method of 'drumming' for orders to be supplied from another State, constitutes a part of interstate commerce, and that the Statutes of Tennessee imposing a tax upon such business was in conflict with the Commerce Clause of the Constitution of the United States, and therefore void."

In Lyng vs. Michigan, 135 U. S., p. 166, FULLER, C. J., said:

"And in Leisy vs. Hardin, the judgment in which has just been announced, that the right of importation of ardent spirits, distilled liquors, ale and beer from one State into another, includes by implication the right of sale in original packages at the place where the importation terminates; and that the power cannot be conceded to a State to exclude directly or indirectly, the subjects of interstate commerce, or by the impostion of burdens thereon, regulate such commerce *without Congressional permission*. The same rule that applies to the sugar of Louisiana, the cotton of South Carolina, the wines of California, the hops of Washington, the tobacco of Maryland and Connecticut, or the products natural or manufactured of any State, applies to commodities in which a right of traffic exists, recognized by the Laws of Congress, the decisions of the Courts, or the usages of the commercial world. It devolves on Congress to indicate such exceptions as in its judgment or as discretion may demand under particular circumstances."

In Stoutenburgh vs. Hennick, 129 U. S, p. 141, the question arose, under an Act of the Legislative Assembly of the District of Columbia, providing:

"That no person shall be engaged in any trade, business or profession hereinafter mentioned until he shall have obtained a license therefor, * * *"

"Commercial agents shall pay two hundred dollars annually. Every person whose business it is, as agent, to offer for sale goods, wares or merchandise, by sample, catalogue *or otherwise*, shall be regarded as a commercial agent."

Here, as in the leading case of Robbins vs. Taxing Dist., and in the case now under consideration, *nothing in the law indicated any discrimination founded on the origin of the things sold.* Hennick was convicted for having engaged in the business of a commercial agent, and of offering for sale, as agent for merchants in Baltimore, certain goods by sample, catalogue *and otherwise* without having first procured a license.

This Court, by FULLER, C. J., said:

"This provision was manifestly regarded as a regulation of a purely municipal character. * * * But is indistinguishable from that held void in Robbins vs. Shelby Taxing District," etc., "as being a regulation of interstate commerce *so far as applicable to persons soliciting, as Hennick was*, the sale of goods on behalf of individuals or firms doing business outside the District.

"The conclusions announced in the case of Robbins were that the power granted Congress to regulate commerce is necessarily exclusive whenever the subjects of it are national or admit only of *one uniform system or plan of regulation throughout the country*, and in such case the failure of Congress to make express regulations is equivalent to indicating its will that the subject shall be left free; that in the matter of interstate commerce the United States are but one country, and are and must be subject to one system of regulation, and not to a multitude of systems; and that a State statute requiring persons soliciting the sale of goods on behalf of individuals or firms doing business in another State to pay license fees for permission to do so is, in the absence of Congressional action, a regulation of commerce in violation of the Constitution. The business referred to is thus definitively assigned to that class of subjects which *calls for uniform rules and* national legislation, and is excluded from that class which can be best regulated by rules and provisions *suggested by the varying circumstances of different localities*, and limited in their operation to such localities respectively (Cooley vs. Phila. Board of Wardens, 53 U. S., 12 How., 299 [13:996]; Gilman vs. Philadelphia, 70 U. S., 3 Wall., 713 [18:96]). It falls, therefore, within the domain *of the great, distinct, substantive power to regulate commerce*, the exercise of which cannot be treated as a mere matter of local concern, and committed to those immediately interested in the affairs of a particular locality."

In Asher vs. Texas, 128 U. S., p. 129, this Court decided that a law of Texas which without *distinction of citizenship or origin of goods*, required every commercial traveler or drummer to obtain a license and pay a tax therefor, was repugnant to the Constitution of the United States *when applied to citizens of other States* soliciting trade in Texas. And in Leloup vs. Port of Mobile, 127 U. S., 645, which is a case of a license

tax on an interstate telegraph company, BRADLEY, J., said:

"Ordinary occupations are taxed in various ways, and, in most cases, legitimately taxed. But we fail to see how a State can tax a business occupation when it cannot tax the business itself. Of course, the exaction of a license tax, as a condition of doing any particular business, is a tax on the occupation; and a tax on the occupation of doing a business is surely a tax on the business."

"A great number and variety of cases involving the commercial power of Congress have been brought to the attention of this Court during the past fifteen years which have frequently made it necessary to re-examine the whole question with care; and the result has sometimes been that in order to give full and fair effect to the different clauses of the Constitution, the Court has felt constrained * * * to modify in some degree certain *dicta* and decisions that have occasionally been made in the intervening period" (p. 648).

Osborn vs. Mobile, 83 U. S., is specially named as a case which would now be decided differently, and we trust that Machine Co. vs. Gage, and *pro tanto* Woodruff vs. Parham will now be expressly included in that category.

Continuing, Mr. Justice BRADLEY says that the fairest and most just construction of the Constitution in all its parts

"leads to the conclusion that no State has the right to lay a tax on interstate commerce in *any* form, whether by duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, and the *reason is*" (not that there is unfair discrimination, but) "that such taxation *is a burden on that commerce*, and amounts to a regulation of it, which *belongs solely to Congress*. This is the result of so many recent cases that citation is hardly necessary" (p. 648).

In Bowman vs. Chicago, 125 U. S., p. 486, MATTHEWS, J., quoted Hall vs. De Cuir, 95 U. S., 485, which was a case of a carrier, as follows:

"We think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress."

And again, p. 630, quoting from Brown vs. Houston, 114 U. S. (which was a case of tax on property and not on the commercial act of selling it):

"The power of Congress over commerce among the States is certainly so far exclusive that no State has power to make any law or regulation which will affect the *free and unrestrained* intercourse and *trade* between the States, as Congress has left it, or which will impose any *discriminating* burden or tax upon the citizens or products of other States, coming or brought within its jurisdiction. All laws and regulations are restrictive of natural freedom to some extent; and, where no regulation is imposed by the Government, which has the exclusive power to regulate, it is an indication of its will that the matter shall be left free. So long as Congress does not pass any law to regulate commerce among the several States, it thereby indicates its will that that commerce shall be left free and untrammeled; and *any regulation of the subject* by the States is repugnant to such freedom. This has frequently been laid down as law in the judgments of this Court."

And quoting p. 497, from Robbins vs. Shelby, etc., 120 U. S.:

"It is strongly urged, *as if it were a material point* in the case, that no *discrimination* is made between domestic and foreign drummers—those of Tennessee and those of other States; that all are taxed alike. But that does not meet the difficulty. *Interstate commerce cannot be taxed at all*, even though the same amount of tax should be laid on domestic commerce, or that which is carried on solely within the State. This was decided in the case of the State Freight Tax, 82 U. S."

In the same case FIELD, J., p. 505, cites, with approval, from Brown vs. Maryland:

"If this power reaches the interior of a State, and may be there exercised, *it must be capable of authorizing the sale of those articles which it introduces.* Commerce is intercourse; one of its most ordinary ingredients is traffic. It is inconceivable that the power to authorize this traffic, when given in the most comprehensive terms, with the intent that its efficacy should be complete, should cease at the point when its continuance is indispensable to its value. To what purpose should the power to allow importation be given, unaccompanied with the power to authorize a sale of the thing imported? Sale is the object of importation, and is an essential ingredient of that intercourse of which importation constitutes a part. It is as essential an ingredient, as indispensable to the existence of the entire thing then, as importation itself. * * * Congress has a right not only to authorize importation, but to authorize the importer to sell. * * * The power claimed by the State is, in its nature, in conflict with that given to Congress. * * * We think, then, that if the power to authorize a sale exists in Congress, the conclusion that the right to sell is connected with the law permitting importation, as an inseparable incident, is inevitable. * * * *We suppose the principles laid down in this case to apply equally to importations to a sister State.*"

Continuing, Mr. Justice FIELD says, p. 506:

"There is great difficulty in drawing the line precisely where the commercial power of Congress ends and the power of the State

begins. The same difficulty was experienced in Brown vs. Maryland, in drawing a line between the restriction on the States to lay a duty on imports and their acknowledged power to tax persons and property. In that case the Court said that the two, the power and the restriction, though indistinguishable when they did not approach each other, might, like the intervening colors between white and black, approach so nearly as to perplex the understanding as colors perplex the vision, in marking the distinction between them: but as the distinction existed, it must be marked as the cases arise. And after observing that it might be premature to state any rule as being universal in its application, the Court held, as sufficient for that case, that when the importer had so acted upon the thing imported, that it had become incorporated and mixed up with the mass of property in the country, it had lost its distinctive character as an import, and had become subject to the taxing power of the State: but that while remaining the property of the importer in his warehouse in the original form or package in which it was imported, a tax upon it was plainly a duty on imports."

In Philadelphia, &c., vs. Penna., 122 U. S., p. 339, BRADLEY, J., said, referring to the State Freight Case, 15 Wall.:

"The Court, in its opinion, took notice of the fact that *law was general in its terms, making no distinction between freight transported wholly within the State and that which was destined to, or came from, another State.* But it was held that *this made no difference.* The law might be valid as to one class, and unconstitutional as to the other. On this subject Justice STRONG said: 'The State may tax its internal commerce; but if an act to tax interstate or foreign commerce is unconstitutional, it is not cured by including in its provisions subjects within the jurisdiction of the State. Nor is a rule prescribed for carriage of goods through, out of, or into a State any the less a regulation of transportation because the same rule may be applied to carriage which is wholly internal.' This last observation meets the argument that might be made in the present cases, namely, that *the law is general in its terms*, and taxes *receipts for all transportation alike, making no discrimination* against receipts for interstate or foreign transportation, and hence cannot be regarded as a special tax on the latter. The decision in the case cited shows that *this does not relieve the tax from its objectionable character.*"

In a later portion of that opinion Mr. Justice BRADLEY quotes and reinforces the powerful observations of Chief-Justice MARSHALL in Brown vs. Maryland, touching the consequences which might result from an allowance to the State of *any* power to tax interstate or foreign commerce.

In *Robbins vs. Taxing District* of Shelby County, 120 U. S., p. 493, Mr. Justice BRADLEY, formulating the conclusions deducible from previous cases, declared it to be an established principle that the only way in which

commerce between the States could be legitimately affected by State laws was when the police power was exerted for the protection of public health, etc., or, incidentally, by the imposition of authorized taxes, and he added:

> "But in making such internal regulations a State cannot impose taxes * * * upon property imported into the State from abroad or from another State, and not yet become part of the common mass of property therein; * * * and no regulations can be made directly affecting interstate commerce."

The facts of that case only required a decision on the question, "Whether it is competent for a State to levy a tax or impose any other restriction upon the citizens or inhabitants of other States, for selling or seeking to sell their goods in such State *before they are introduced therein.*" The decision exhibits, therefore, a guarded limitation of the question decided, to the facts of the case, but for which, *Robbins vs. The Taxing District of Shelby* would be absolutely conclusive of every question involved in this case.

Looking to the substance of things, and assuming it to be clear that this case reveals nothing which would operate to reduce our machines into the common mass of property before the levying of these taxes; no difference can be found between those acts of commerce in which the sale and delivery are simultaneous, and those in which, for the convenience of either party, the delivery is postponed. But even if this is not self-evident, no argument is needed; for *Brown vs. Maryland* was a case of goods first imported and thereafter sold. As foreign and interstate commerce stand on the same footing, deriving their protection from the same constitutional clause, *Brown vs. Maryland* is in this and in every other essential respect exactly like the case at bar.

## The decisions of this Court have returned to the lines laid down in Brown vs. Maryland.

In the careful building up of the law upon this important subject, judicial opinion seems to have been formed in *strata*. Descending through the upward development of sound opinion we reach, in *Guy vs. Baltimore* and *Machine Co. vs. Gage*, the *stratum* in which the desire to compromise between conflicting powers—to reconcile the taxing power of the State on the one hand, and the absolute right of Congress to hold all interstate commerce free from State burdens, on the other—seems most active.

In *Welton vs. Missouri* there are signs of a recession of the doctrine of "discrimination,"—driven out by strong assertions of the effect of the commerce clause to exclude absolutely all State interference, whether discriminating or undiscriminating. We find this Court employing language of the clearest, most uncompromising sort in asserting what may be called the *exclusive* exclusiveness of Congressional authority; at the same time giving a sort of side recognition to the departing element of "discrimination" (a thing which was natural to do in that case, where there was a very offensive discrimination) as something which might under some circumstances modify the rigor of that exclusiveness. The Court says (p. 278):

"The general power of the State to impose taxes in the way of licenses upon particular pursuits and occupations within its limits is admitted, but, like all other powers, must be exercised in subordination to the requirements of the Federal Constitution. Where the business or occupation consists in the sale of goods, the license tax required for its pursuit, is, in fact, a tax upon the goods themselves. If such a tax be within the power of the State to levy, it matters not whether it be raised directly from the goods or indirectly from them through the license to the dealer; *but if such tax conflicts with any power vested in the Congress* by the Constitution of the

United States, it *will not be any the less invalid because enforced through the form of personal license.*"

And at page 279 it is said:

"So in like manner the license tax exacted by the State of Missouri from the dealers in goods which are not the product or manufacture of the State, before they can be sold from place to place within the State, must be regarded as a tax upon such goods themselves; and the question presented is, whether legislation *thus discriminating* against the products of other States in the conditions of their sale by a certain class of dealers is valid under the Constitution of the United States."

If we rightly interpret the recent cases, the question as stated includes a term which does not properly belong in it. It should be restated simply,

"Whether legislation imposing a tax or burden upon the introduction of the products of other States, &c., is valid."

At page 280 the Court says:

"Where the subject to which the power applies is national in its character, or of such a nature as to admit of uniformity of regulation, the power is exclusive of *all* State authority."

And again on page 280:

"The power of the State to exact a license tax of any amount being admitted, no authority would remain in the United States or in this Court to control its action, however unreasonable or oppressive. Imposts operating as an absolute exclusion of the goods would be possible, and all the evils of discriminating State legislation, favorable to the interests of one State and injurious to the interests of other States, a case which existed previous to the adoption of the Constitution, might follow, and the experience of the last fifteen years shows would follow, from the action of some of the States."

From *Brown vs. Maryland*, in which a State tax on the sale of foreign imported goods was restrained simply because it trenched upon this exclusive control, down to the later cases we pass over a period in which the idea of an exclusive control which absolutely did *exclude*, and the idea of another kind of exclusive control, which was *liable* under

certain circumstances *not to be entirely exclusive*, seem to have been confounded. The later cases indicate that this Court has now passed the stage at which it is disposed to compromise the constitutional condition—exclusive control in Congress; and has come to recognize an unqualified necessity for upholding the exclusiveness of that power, wherever the subject in question is national and admits of uniform commercial regulation throughout the entire Union. This doctrine, freed of fallacies about discrimination, seems to have prevailed at last as a survival of the fittest.

**This discrimination in this case, not expressly but by practical operation.**

But in the case now at bar for judgment there is a furtive and mischievous effort at discrimination, not in terms, but by "operation." This is made very clear at page 5 of the brief of Mr. Hillyer. It seems that there are *no* sewing machine companies *in* Georgia; that there are wholesale dealers there who are not sewing machine companies; that there are sewing machine companies, *outside of the State*, who sell within it by *retail*; and that there are other retail dealers there, not sewing machine companies or wholesale dealers.

Availing of this actual situation, the Legislature, at the instance, doubtless, of the small traders and storekeepers throughout the country, who naturally would seek to monopolize the retail trade in these articles, has arranged the tax so that (1) all wholesale dealers pay two hundred dollars a year, and ten dollars a month for each agent; (2) all sewing machine companies, wholesale *or retail*, pay the like tax; (3) dealers who are neither "sewing machine companies" nor "wholesale dealers" pay no tax at all. From this it results that the complainant is taxed upon its retail dealing,

while resident merchants, of whom there are a large number selling machines by retail, pay nothing. I quote from Mr. Hillyer's excellent brief (p. 6):

"But the fact of the situation was that there were large numbers of individuals and firms in the State who were retail dealers in sewing machines, and they were all resident merchants except one only, the Singer Manufacturing Company. The latter were able to pay, and non-resident, and had no friends. The local merchants were numerous, and had votes and many friends, and would be benefited if the Singer Company were driven out of the business. The law is so framed as to tax the Singer Company two hundred dollars general license, and ten dollars license tax for each of its agents; but so as to tax the other hundreds of retail dealers—its rivals in trade—nothing whatever."

Upon this state of facts we may claim, therefore, that the cases of Guy vs. Baltimore and Woodruff vs. Parham, 8th Wallace, *et hoc genus omne*, would be found inapplicable to this case even as to the saving effect of non-discrimination on State tax laws.

In Machine Company vs. Gage, already referred to at page 6, 100 U. S., 677, a statute of the State of Tennessee provided: "All peddlers of sewing machines and selling by sample shall pay a tax of ten dollars." This was upheld by the Supreme Court of the State, on the ground "that the law taxing the peddlers of such machines levied the tax upon all peddlers of sewing machines, *without regard to the place of growth or produce of material or of manufacture.*"

Mr. Justice SWAYNE said: "We are bound to regard this construction as correct, and to give in the same effect as if it were a part of the statute;" adding (679), "In all cases of this class to which the one before us belongs it is a test question whether there is any discrimination in favor of the State or of the citizens of the State which enacted the law. Wherever there is, such discrimination is fatal. Other considerations may lead to the same result."

"In the case before us the statute in question, as construed by the Supreme Court of the State, makes no such discrimination. It applies alike to sewing machines manufactured in the State and out of it. * * * The State, putting all such machines upon the same footing with the tax complained of, had an unquestionable right to impose the burden."

This Court would have had no difficulty in recognizing the fallacy of this reasoning, if the case had been

one of a tax by the State of Maine on all oranges, bananas, cotton and cane sugar; for it would have known that such a law was intended to operate as a discrimination. While there is no natural presumption against the production of sewing machines in Georgia, we have given our reasons above for assuming that the Court will find in this case ground on which to assume that a tax on the sale of sewing machines in that State is, up to this time, as certainly a tax on foreign-made goods and no other, as would be a similar tax in Maine on cotton and bananas.

The last-named case is still cited in briefs, and should be expressly overruled.

See State vs. Bracco, 9 S. E. Rep., 404; 103 N. C., 349; and
State vs. Richards, *Ibid*, 245; 32 W. Va., 348.

This brief review of cases shows that the "narrow and transitory interests," denounced by Mr. Madison, still persist as an influential motive in the policy of sister States. The least withdrawal of the line of demarcation induces a movement upon the protected field over which Congress has for the general welfare been given exclusive power. Granger laws, internal navigation acts, taxes on drummers, covert discriminations against out-state goods, taxes on sales of imported goods —all of these indicate that the cancer of local selfishness needs the knife; and it is not for Federal Courts to inquire whether an interpretation of State laws which exempts the foreign importer or the citizen of another State results in a discrimination unfavorable to the citizen of the State which imposes the tax.

McCulloch vs. Maryland, 4 Wheat., 317, 428.
Robbins vs. Shelby, &c., 120 U. S., 489, 499.
Asher vs. Texas, 128 *Ib.*, 129.
Leloup vs. Mobile, 127 *Ib.*, 640, 648.
Kintland vs. Hotchkiss, 100 *Ib.*, 498.

This case calls for judgment upon a simple right of traffic. There is no need, as in many other cases, to determine whether the thing in question is commerce. We have not in this case to do with any agency of trade or with questions of taxation on property, but with trade itself. We have to do with the fundamental act of trade and interchange.

May the traveling artisan of one State freely offer the product of his labor in another, in exchange for what the citizen of that other has to give?

Or are there circumstances which will justify imposing on him a tax for local benefit at "the commencement of business" and before his property has become merged?

Free intercourse, trade and commerce are the very life blood of national unity—the corpuscular attraction by which the social atoms are held together in political mass. The interference with such intercourse which this case shows is of very intimate and extended concern; and the instance vividly illustrates the principles involved, because it is so offensive to domestic interests, and is so palpable and conspicuous, when a Georgia buyer cannot buy what he needs, until the seller has paid a tax. Of all the devices of man's ingenuity the sewing machine has probably ameliorated human toil and enhanced its product as much as any other. Its benefits cluster by the fireside. It is an intimate interest of home. Whatever hinders or favors its introduction acts intimately and upon the closest domestic concerns. The appellant, passing over all middlemen, offers its machine free from their profits, directly to the farmer's wife and to the housewife and the artisan everywhere. For this purpose its agents visit every farm-house and every door in every town and hamlet in every State in the Union. The effect of the law of Georgia is to make those visits difficult, and may, if it is lawful at all, be

so increased as to cut off this desirable intercourse entirely. For, the power to tax is a power to prohibit.

Is it not clear that there is no safe ground for compromises over the conditions of national intercourse? Is there anything more important from generation to generation than that the intercourse of the people of these States in the daily business of life should be absolutely free?

GROSVENOR LOWREY,
JOSEPH S. AUERBACH,
Of Counsel for Appellant.

Office Supreme Court U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

THE SINGER MANUFACTURING COMPANY
*vs.*
W. A. WRIGHT, Comptroller-General, *et al.*

In the Supreme Court of the United States. Appeal from the Circuit Court for the Northern District of Georgia.

# Supplemental Brief of CLIFFORD ANDERSON for the Appellees.

Geo. W. Harrison, State Printer, Atlanta, Ga.

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|---|---|
| THE SINGER MANUFACTURING CO. *vs.* W. A. WRIGHT, COMPT. GENERAL, *et al.* | Appeal from the Circuit Court of the U. S. for the North'n Dist. of Georgia. |

SUPPLEMENTAL BRIEF FOR THE APPELLANT.

1. In support of the contention that the appellants carried on a local business in Georgia, when the tax Act complained of was passed, and had done so for years before, I refer the court to page 26 of the printed record, where appellant, in an amendment made to its bill, uses the following language: "Complainant further says that though chartered originally by the State of New Jersey, it has been conducting its business in the State of Georgia, the same being transactions of commerce exclusively, viz., that of selling its wares and having large stocks of goods of the same, with horses, wagons and outfit on hand, and the necessary buildings rented and secured, in Georgia. In this manner complainant entered the said State of Georgia 15 or more years back, and complainant has been in the said State, thus occupied and domiciled continuously, for that time or longer, under the sanction of its laws, and had in said State, property, appliances and outfit as aforesaid, of the value of twenty-five thousand dollars or more, at the time said tax Act, in this bill complained of, was passed."

Surely the business thus described is not *inter*-State, but State commerce.

2. But, if it can, with any propriety, be designated as *inter*-State commerce, this case is, I contend, governed by the decision in Machine Co. *vs.* Gamage, 100 U. S. 677, in which it was held that a statute which pro-

vided that "All peddlers of sewing machines and selling by sample shall pay a tax of ten dollars," is not violative of the "Commerce clause" of the Constitution; the Supreme Court of Tennessee (the State in which the Act was passed) having construed it as imposing "the tax upon all peddlers of sewing machines without regard to the place of growth or produce of material or of manufacture." Mr. Justice Swayne said: "We are bound to regard this construction as correct, and to give it the same effect as if it were a part of the statute;" adding (on page 679): "In all cases of the class to which the one before us belongs, it is a test question whether there is any discrimination of the State or of the citizens of the State which enacted the law. Wherever there is, such discrimination is fatal. Other considerations may lead to the same result."

It was held that the State had the right to impose the tax.

It is deemed wholly unnecessary to collate the numerous decisions of this court on the subject under discussion, or to attempt to classify them. I venture to remark that if such a classification were made, and due care and discrimination were exercised in making it, there would be no difficulty in showing that this case belongs to a class, as stated in Machine Co. *vs.* Gamage, wholly different from other classes in which the court has held that the States cannot tax non-residents or their agents for the privilege of taking orders to be filled where such non-residents do business (or sell by sample only), and that they cannot tax those who import merchandise into a State to be sold in the original packages only.

If a tax in a case like this is required alike from citizens and non-residents—if there is no discrimination; if the non-resident dealer is placed on an exact

equality with the resident of the State levying the tax, it is not a regulation of inter-State commerce. It may incidentally affect it, but does not regulate it. No *burden* is placed on commerce between the States; to be such a *burden*, the tax must be more onerous than the tax required of persons engaged in *State* commerce.

To hold that the framers of the constitution intended that the State should *favor* non-residents engaged in doing business within their jurisdiction, over their own citizens, would be to suppose that a higher standard of neighborly kindness was intended to be established than that required by the *golden rule*, "Do unto others as you would have them do unto you"; and higher than that required by the "second" great commandment: "Thou shalt love thy neighbor as thyself."

CLIFFORD ANDERSON,
Counsel for Appellants.

Office Supreme Court U. S.
FILED
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JAMES H. McKENNEY,
CLERK.

THE SINGER MANUFACTUR'G CO.,
vs.
WM. A. WRIGHT, et al.

No. 69,
October Term,
1890.

Appeal from the Circuit Court of the United States for the Northern District of Georgia.

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Additional points submitted by George Hillyer of Counsel for the Appellant; under agreement that the cause be heard on the printed briefs; and by a full bench.

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(1) On the motion to dismiss we add to what has already been said, the statement that the tax act of which the complaint is made in our bill provides for criminal prosecution in case of its violation or non-payment of the so-called tax; that one of appellant's agents was actually under arrest, and prosecution of others threatened, and they in fear of it, and that it was under compulsion and duress of such criminal prosecution, as well as under compulsion of the levies and seizure of appellant's property, that the so-called taxes or exactions were paid after the appeal was entered. (See affidavit of Mr. Dixon, filed with the printed proofs in reply to motion to dismiss.)

The Court below dismissed our bill. The judgment from which we appealed *is a final judgment*, and if this ap-

peal were dismissed, that judgment would thereby be made to stand as a final adjudication of our rights; and when we sued for a recovery of the illegal exactions, as suggested in the motion to dismiss this appeal, that judgment could be plead as estoppel, and in bar of such suit. Suppose the action were trover, and plaintiff had a verdict, and the defendant appealed or sued out a writ of error; and whilst the case was pending an appeal, the plaintiff being the stronger of the two, should meet the defendant in the street and throw him down and forcibly take the disputed property away from him, and then go into the Court and move to dismiss the appeal on the ground that he had thus gotten the property into his hands, and that the only remedy of his adversary was to bring another suit to recover it back. This would be absurd; and yet it is substantially just the question made by this motion. It should be remarked, also, that the flexibility of equity proceedings places the appellant here on even better ground than if this were a writ of error at law instead of an appeal in equity. The authorities cited in appellant's original brief filed on the motion to dismiss will sustain this distinction.

(2) We beg to remind the Court that this case does not turn alone on the "Commerce Clause of the Constitution of the United States," but also on the violation of the Fourteenth Amendment of the Constitution of the United States, and on the violation of the "Uniformity Clause" of the Constitution of the State of Georgia. (See page 4 of the original brief, where the three grounds of error are set forth specifically and at large.) We rely not on any one of them alone, but on each of them, and say that either one, when understood by the Court, would necessitate a reversal.

this spoliation, paragraph 3 of Section 8 of Article I., and the Fourteenth Amendment, as follows:

> SEC. 8. The Congress shall have power * * *
> To regulate commerce with foreign nations, and among the several States * * *"

> XIV. Amendment.
> No State shall make * * * any law which shall abridge the privileges or immunities of citizens of the United States. * * *"

Only the clause first quoted will be discussed in this brief.

The injunction prayed for to restrain the collection of this tax was refused, on the ground that the Legislature of Georgia has the right for purposes of taxation, to classify occupations carried on within the State; and in so doing to include sewing machine companies who cause their imported machines to be sold there either by wholesale or retail, in one taxable class with all other "wholesale dealers;" thus subjecting them to a tax not paid by other retail dealers who are not sewing machine companies.

The Circuit Court says:

> "But complainant says that it sells in Georgia exclusively to consumers or users—in other words, does a retail business entirely—and that there are a large number of other retail dealers, individuals and firms that are not taxed. I see no reason why the State may not *fail to tax* certain classes of business" (p. 34, Trans. of Rec.: and see also pp. 4, 13, 23, 29 and 30, at foot of page).

After this exposition of that Court's idea of uniformity in taxation no reference is made to the doctrine hereafter to be considered, that State legislation which does not discriminate unfavorably against citizens of other States, but only subjects them to equal burdens with citizens of the taxing State, is a valid exercise of the reserved taxing power of the State. The assertion of that doctrine will doubtless be heard here however, accompanied by the argument that sewing machine companies of *Georgia* (whether any now exist or not), are (or will be) subject to the same tax as the appellant; and

that there is thus no discrimination, and no infraction of any Federal guarantee, which the appellant, as an out-State manufacturer and interstate "dealer," has the right to claim.

To sustain such an argument in this particular case, there should have been proof that there are companies organized or located in the State of Georgia, which make or deal in sewing machines, if such is the fact. There is no natural order or established custom out of which a presumption springs that sewing machines are manufactured in Georgia. Probably the presumption is otherwise, especially in aid of a statute which imposes the personal penalties of confiscation, fine and imprisonment. Doubtless all the parties to the litigation were led by their common knowledge that there are no such manufacturing or dealing companies in the State of Georgia, to take this as a fact by common consent; and therefore the case is lacking in proof on that point. The Court says (p. 31):

> "The language of the act is certainly broad enough to cover all the sewing machine companies, whether the company be of this State or of another State * * * The fact, and probably such is the fact, *that no sewing machines are manufactured in this State*, cannot change the matter if the language of the tax act embraces such manufactories as now, *or hereafter, during the operation of the law*, may be in the State."

The only proof bearing on this point, seems to indicate that none of the sewing machine companies are "dealers" within the State except to *sell*. The only statutory reference to manufacturing—a very imperfect reference, it is true—is as follows: "Wholesale dealers * * * selling sewing machines *manufactured by companies* that have not paid," &c., and it perhaps favors the inference that only companies manufacture anywhere. Since *they* only *sell* in Georgia it results that nobody manufactures there. It is clear enough, from the whole case, that all companies doing business in the State are foreign; and that that element in "dealing" which includes making the thing to be sold,

does not exist in that State up to this time. I shall assume from the whole case that sewing machines are as yet no more a product of Georgia than cotton is a product of New Jersey; and shall claim that a sewing machine in its organized form is as much an "original package" of imported goods in Georgia, as would be a bale of cotton in New Jersey; and that a Georgia tax on sales of sewing machines (without discrimination in favor of those made in Georgia), would be like a New Jersey tax on cotton (without discrimination in favor of the crop of that State).

Certain propositions covering this case may be deduced from the decisions of this Court and postulated as follows:

> That a State may tax its own citizens for the prosecution of any particular business within the State;
>
> That when citizens of other States prosecute occupations within such taxing State, they must submit to a fair and undiscriminating application of such State laws, and only to such;
>
> That whether exerted upon residents or non-residents, citizens or aliens, neither the power of the State to tax, nor any of its large police powers can be permitted to work a *practical* assumption of the powers conferred by the Constitution of the United States on Congress.
>
> *Hannibal vs. Husen*, 95 U. S., 465.

The undisputed facts to which these axioms apply are:

> That the appellant is a corporation foreign to Georgia;
>
> That it ships to and sells in that State sewing machines constructed in New Jersey;

That the sole mode of its business is to sell at retail, *i. e.*, by offering single machines to single purchasers for use ; and

That there are many retail dealers in the State who, not being sewing machine companies or wholesale dealers, pay no tax.

The questions arising under this state of law and fact are :

Does the statute in question, as interpreted by the defendant, operate as a regulation of commerce ?

And, assuming that Georgia does not discriminate unfairly between the appellant and other dealers, is such a regulation valid ?

Does the act discriminate unfairly between appellant and other retail dealers ; and if so what is the effect of that discrimination on provisions otherwise valid ?

May such a tax be in any case imposed so long as no action on the subject has been taken by Congress ?

The last question is believed to require no attention, in view of recent and very clear utterances of this Court, holding that the absence of regulation by Congress in cases of this class is tantamount to a declaration that the subject shall be free.

The third is also settled without dispute by numerous cases declaring discrimination in such matters fatal to a State law.

Under the second, we are compelled at once to meet decisions in this Court, one of which with absolute directness and others by more or less clear and binding inference, seem to uphold the idea that taxes on interstate sales or on the business of selling goods of out-State production, *may* be valid if like taxes are also collected on sales of like goods produced in the State.

Thus in *Howe Machine Co. vs. Gage*, 100 U. S., 676, it was held, that a Tennessee tax on peddlers of sewing

machines, which applied alike to sewing machines made in the State and out of it, was not repugnant to the Constitutional clause in question.

At the same term of the Court, in *Guy vs. Baltimore*, *Ibid*, 434, it was held, that no State can, consistently with the Constitution of the United States, impose upon the products of other States brought therein for sale or use, or upon citizens because of their being engaged in the sale thereof, or in the transportation thereto of the products of other States, *more onerous burdens than it imposes upon the like products of its* territory.

In *Woodruff vs. Parham*, 8 Wall., 123, which was relied on in the last case, a collection of taxes for the sale at auction in Alabama of goods brought from another State, such taxes being imposed alike on all sales, whether of the produce of that or other States, was held good. All these cases went upon a consideration of the power of Congress to regulate commerce.

At the same term with *Woodruff vs. Parham*, in *Hinson vs. Lot*, a State tax on the introduction of spirituous liquors was upheld against a strong dissenting opinion by NELSON, J. (which, by subsequent decisions, appears to have been right), because the same tax had been imposed on liquors of State production. Sporadic appearances of this doctrine, by which incursions upon the exclusiveness of Congressional powers to regulate, &c. (whether exercised or not), were, if not excused, seemingly condoned, are seen in subsequent cases which will be referred to. The impelling motive was always an anxious desire to respect the reserved powers of the States. The doctrine begins to disappear again after *Guy vs. Baltimore*—until finally, all recent decisions rest once more on the broad but simple foundation laid by Chief Justice MARSHALL in *Brown vs. Maryland*.

It will be profitable, first, to review briefly the mischiefs which led to the abandonment of the Confedera-

tion and the adoption of the Constitution. For, says Mr. Madison:

> * * * The defects, the deformities, the diseases, and the ominous prospects for which the convention were to provide a remedy * * * *ought never to be overlooked* in expounding and appreciating the Constitutional charter—the remedy which was provided." 5 Elliott, 119.

Commerce in general and its needs, were the conspicuous and only professed occasion for the call of the States to the Federal Convention of 1787. Doubtless the grievous condition of foreign commerce and the inability of the Confederation to make and enforce treaties with foreign nations more than irritating and annoying interstate regulations, led Virginia to recommend the first Convention at Annapolis. The address of the Annapolis Convention of September 14, 1786, to the States mentions, as a reason why the Commissioners separated without considering any amendments to the Articles of Confederation—that having met and proceeded to a communication of the powers of the delegates, they found that most of the States had in substance, and in nearly the same terms, "authorized their respective Commissioners * * * to take into consideration the trade and commerce of the United States; to consider how far a uniform system in their commercial intercourse might be necessary to their common interest and permanent harmony; and to report to the several States such an act relative to this great object as * * * would enable the United States and Congress assembled effectually to provide for the same;" but "that the State of New Jersey had enlarged the object of their appointment, empowering their commissioners to consider how far a uniform system in their commercial regulations and *other important matters* might be necessary," etc. And the Commissioners add that they "did not conceive it advisable to proceed on the business of their mission, * * *," and they "recommend speedy measures * * * to effect a

general meeting of the States * * * for the same and such other purposes as the situation of public affairs may require." They submit the opinion "that the idea of extending the powers of the deputies to other objects than those of commerce, which has been adopted by the State of New Jersey, was an improvement on the original plan," and that "they have been induced to think that the power of regulating trade is of such comprehensive extent and will enter so far into the general system of the Federal Government that to give it efficacy, and to obviate questions and doubts concerning its precise nature and limits, may require a corresponding adjustment of other parts of the Federal system" (I. Elliot's Debates, p. 117).

Out of a defective system of interstate and foreign commercial regulation, therefore, grew the movement which ended in the present Constitution. and for the moment no other motive was seen, or at least, expressed. So far as interstate relations were concerned, the Articles of Confederation gave to the appellant exactly the rights which the Statute of Georgia, as interpreted, now provides; that is, equal rights, with like immunities and obligations, whether the persons trading, or the things traded in, were of the taxing State or of another.

Article IV. of the Articles of Confederation provided that—

"the better to secure and perpetuate mutual friendship and intercourse among the people of the different States of this Union, the free inhabitants of each of these States * * * shall be entitled to all the privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and egress to and from any other State, and *shall enjoy therein all the privileges of trade and commerce*, subject to the *same duties, impositions and restrictions as the inhabitants thereof* respectively" (I. Elliot's Debates, 79).

An ineffectual effort was made in the Congress of the Confederation of 1785 to amend this article, and that body pathetically appealed to the States to be empowered for a term of years to levy at all ports an impost duty on foreign goods; a request which was not

unanimously conceded, and the failure of which made other measures necessary for the salvation of the new Union. It is startling to consider what might have been the consequence had that temporary power been granted, and that amendment made. Pressing demands being thus temporarily provided for, and threatening dangers to commerce wholly or partially averted, the need for a more perfect union might have been less clear to the people. A wide field for conjecture is opened as to the effect on the national spirit of a few years' delay at that formative and critical period. The commercial clause of the Constitution, now under consideration, by breaking down barriers to free intercourse of the people of all the States as people of one nation, fostered the growth of that homogeneity which stayed the spread of secession, and has rendered the present cordial re-union possible.

But the proposed amendment to the Articles did not succeed, the impost was refused, the wrongs to free commerce remained unredressed, and the Federal Convention was called.

Mr. Madison, in pointing out the sources of dissatisfaction with the Confederation, mentions

"the peculiar situation of some of the States which, having no convenient ports for foreign commerce, were subject to be taxed by their neighbors, through whose ports their commerce was carried on. New Jersey, placed between Philadelphia and New York, was likened to a cask tapped at both ends; and North Carolina, between Virginia and South Carolina, to a patient bleeding at both arms. The Articles of Confederation produced a strong protest on the part of New Jersey, and never ceased to be a source of dissatisfaction and discord until the new Constitution superseded the old" (Madison Papers, V. Elliot's Debates, 112.)

The preamble to the law adopted by the Legislature of Virginia, in compliance with the recommendation of the Annapolis Convention, said:

"The General Assembly of the Commonwealth, taking into view the actual situation of the Confederacy * * * can no longer doubt that the crisis has arrived at which the good people of America are to decide the solemn question whether they will, by wise and magnanimous efforts, reap the just fruits of that independence which they have so gloriously acquired, and of that union

which they have cemented with so much of their common blood: or whether, by giving way to unmanly jealousies and prejudices, or to *partial and transitory interests*, they will renounce the auspicious blessings prepared for them by the Revolution. * * *" *Ib.* p. 116.

When the Federal Convention was assembled, Mr. Randolph opened the main business, and, speaking of the defects of the Confederation, said he "professed high respect for its authors, and considered them as having done all that patriots could do in the then infancy of the science of constitutions and of confederacies; when the inefficiency of requisitions was unknown, and *no commercial discord had arisen among States*, etc." Thus the first defect in the Confederation to reveal itself was want of revenue; and the second, the liability to selfish commercial restrictions by the States under the influence of "partial and transitory interests."

It is needless, and would unduly extend this brief review to recount all the ways by which the States, fresh from the generous self-sacrifice of the Revolution, irritated and annoyed each other, and endangered their imperfect union.

Mr. Madison says (Madison Papers, V. Elliot, 119):

"Besides the vain attempts to supply their respective treasuries by imposts, the States having ports for foreign commerce taxed and irritated the adjoining States trading with them, as New York, Pennsylvania, Virginia and South Carolina. Some of the States, as Connecticut and South Carolina, taxed imports from others, as from Massachusetts, which complained in a letter to the Executive of Virginia and sundry other States. In sundry instances, as of New York, New Jersey, Pennsylvania and Maryland, the navigation laws treated citizens of other States as aliens."

New Jersey levied a duty of four pence per gallon on New England rum; 5 per cent. *ad valorem* on wrought iron and steel, of which New England then made a good deal; and in strict analogy to the Georgia Act under consideration, collected £200 for a license to deal in these imported articles. North Carolina levied a duty on all goods imported by land or water (Laws of N. C., 1784, C. 3).

Connecticut and Massachusetts imposed a duty on the importation of all sugar, whether the product or manufacture of the United States or not (New Haven Session, Oct. 1784).

New York consumed the poor profits of hucksters from New Jersey and Connecticut, bringing vegetable supplies to its daily market, by requiring them to enter and clear at its Custom House (N. Y. Laws of 1787, Ch. 81, Republished 1886); to which Connecticut responded by a practical non-intercourse act for a year; and New Jersey by a tax of fifty pounds per year upon ground at Sandy Hook on which the New York lighthouse was erected. (McMaster's History of the People of the United States, Vol. 1, p. 404). In the convention Mr. Williamson, of North Carolina (5th Elliot's Debates, p. 454), declared that Virginia had taken taxes from North Carolinia on 12,000 hogsheads of tobacco, which were necessarily carried across the border for shipment at Virginia ports.

Nor did the adoption of the Constitution at once eradicate the narrow and short-sighted views of policy to which some kinds of politics naturally tend.

New York had in 1787 granted to John Fitch the exclusive right to navigate her waters by steam, and that grant, repeated from time to time by laws passed after the adoption of the Constitution, eventuated in the case of *Gibbons vs. Ogden*. The same disposition has from time to time resulted in various forms of tax upon the privilege of doing business, sometimes openly aimed at the citizens of other States, as in *Welton vs. Missouri*, 91 U. S., 275, and sometimes covertly, as in the case now before this Court.

The following from a recent number of the "New York Sun," refers to a City Ordinance of New York which, however intended, seems to operate harshly against Southern farmers and market gardeners. Whether the enactment be a lawful exercise of police

powers with commercial incidents, or a burdensome regulation of commerce pure and simple, it illustrates a surviving tendency to subsist on the stranger.

"The Aldermen's Committee on Markets gave a final hearing yesterday to the opponents and advocates of the ordinance requiring that fruit and vegetables be sold by weight. The opponents of the scheme were backed up by a delegation of Virginia truck farmers, headed by Col. William Lamb, which had been sent up to New York by the Churchland Grange of Norfolk County, to prove to the Committee that it was an absolute impossibility to weigh the thousands of packages of produce sent every day to New York. The measure would drive these truck farmers to other markets. Several letters were presented from railroad freight agents, all agreeing that the weighing of produce by the producer was impracticable."

In dealing with license fees of this sort upon interstate trading, we are brought face to face with fundamental political rights of citizens of the United States, assailed by the agent of a sovereignty in which one party is a constituent, and seeking protection from another agent of a sovereignty in which both parties are constituents (*Robbins vs. Taxing Dist.*, 120 U. S., 496).

The specific grievance here is that of a New Jersey producer and a Georgia consumer, jointly. The production is a useful and almost indispensable article in household economy throughout the civilized world. The producing mechanic has put his labor, capital ingenuity, credit and skill into this article which thereafter stands as sign and representative of that investment, and of the daily bread, household protection, education of children and thrifty accumulation which are the objects of his labor. This article he sends to Georgia, where it is wanted by another citizen of the nation resident there, a joint participant in a compact by which it is provided that the State of neither party shall interfere in their intercourse across the border; exclusive power over that subject having been vested in a common representative, Congress. The article having arrived in the State of Georgia, and the moment come when the labor and products of the Georgian are to procure for him the needed convenience, and the labor of

the New Jerseyman is to receive the compensation, which is its due, an obstacle arises. No purchase and sale can take place until the New Jersey contributor to this interstate traffic has paid to the State of Georgia a fee of two hundred dollars, and a corresponding fee of ten dollars for every agent employed. Moreover, the trade and commerce proposed is virtually declared criminal unless the fees are paid; and five years' imprisonment is denounced against whoever shall violate the provisions of the act.

All this is justified solely on the ground that the right to tax all persons, property and business within its borders has been reserved by each State. When it is pointed out that the exercise of this reserved power operates to disturb the exclusiveness of the paramount power of Congress, it is answered that Georgia makes the same demand upon its own citizens; and that therefore the usurpation is to be excused. This argument is supported expressly by one case not yet expressly overruled (*Machine Co. vs. Sage*); and inferentially by other cases already referred to as expressing doctrines tending to uphold it, but which are nevertheless incompatible with numerous later cases.

It is believed that a point has now been reached in the judicial development and settlement of questions arising under the Commerce clause, when it may be confidently asserted that any State law which restrains the free disposition within its territory of the products of another State or foreign nation will be held invalid in this Court. We leave out of account, of course, as unnecessary to the discussion, questions arising under the exercise of police powers, and also all questions whether there is here a denial "to citizens of each State all the privileges and immunities of citizens of the several States;" and limit ourselves solely to the case of a State tax law which, in fact, regulates interstate commerce, by imposing a tax upon it, without the permission of Congress.

The motive usually ascribed for granting to Congress exclusive power over this subject was the necessity for what is called "uniform regulation." Where the subject does not admit of uniform regulation, that is, of a regulation having the same force and effect everywhere throughout the Union, the power has been treated as concurrent, or as exclusive only when exercised. Such is the case where local circumstances—quarantine, pilotage, harbor dues, bridging of navigable waters, etc., have had a bearing on commerce. From this has arisen a mistaken use of the idea of uniformity; and in a series of judgments (beginning with *Woodruff vs. Parham*, but now ended) "National uniformity" and internal State "discrimination" are treated as if they were true correlatives. Where there is *such* discrimination there is failure of *such* uniformity, and *vice versa*. And "uniformity" is treated as if it were a condition guaranteed, and "discrimination" as a political vice expressly named and inhibited, by the Commerce clause.

This line of argument is, by the light derivable from the later cases quoted below, seen to be founded on the use of false *criteria*. Uniformity between burdens borne within a State by domestic and foreign goods is one thing; and uniformity throughout the Union, by which like goods bear like burdens in every State to which they go from the State of origin, is quite another thing. Neither of these is a Constitutional criterion, though the latter is an ensuing incident of the enforcement of that separate and exclusive control which the Constitution gives to Congress. We respectfully submit that unjust discrimination by a State against the goods of other States does not authorize us to denounce laws as unconstitutional—under the Commerce clause; and that if such a law does contravene or infringe the exclusiveness of Congressional power, the fact that it does not "discriminate" unfairly, cannot purge it. One kind of uniformity results naturally from the exercise of exclusive power by one common authority throughout all

the States; and another kind of uniformity results from the enforcement of equal regulations upon subjects within a State. The exclusiveness of Congressional authority being maintained, that uniformity which was the motive for creating it, will ensue. The other kind of uniformity is not a subject of national concern, so far as that concern is expressed in the Commerce clause. When discrimination is exerted against persons, a remedy is clearly found in other parts of the Constitution. To those alone, and not to any balancing of exclusive National jurisdiction against proper or improper State action, must we logically look when that action is improper. Traffic between States being the subject with which this case is solely concerned, it is the only object of this particular contention to make it clear that those cases in which the absence of unjust discriminations has been held to excuse intrusions upon the exclusive domain of Congress, are inconsistent with true principle; and that their effect is modified by the later and better considered decisions of this Court. We do not, therefore, pursue the demonstration that State discrimination, when it exists, finds its condemnation and remedy elsewhere than in the Commerce clause; and *ergo* that mention of such discrimination in connection with an exclusive power in Congress is illogical and out of place—a complete *non sequitur*.

A true idea of that uniformity which the Constitution is to conserve implies not that the Georgia sewing woman shall be able to buy a New Jersey machine on as good terms (so far as State taxes influence the price) from the traveling agent of the company as from the local trader; but that every sewing woman in every State shall be able to obtain her machine (so far as State action is concerned) on as good terms as any other woman in any other State. To test, therefore, the constitutional rights of these women to the benefits of free traffic, by the existence or non-existence of uni-

formity inside a single State, is to apply a spurious and misleading criterion.

A clear definition which supports the views here expressed, is given by Mr. Justice FIELD in County of Mobile vs. Kimball, 102 U. S., page 697:

> "The subjects, indeed, upon which Congress can act under this power are of infinite variety. * * * Some of them are national in their character, and admit and require a uniformity of regulation *affecting alike all the States;* others are local or are mere aids to commerce, and can only be properly regulated by provisions adapted to their special circumstances and localities. Of the former class may be mentioned all that portion of commerce with foreign countries or between the States which consists in * * * sale and exchange of commodities. *Here there can of necessity be only one system or plan of regulations, and that Congress alone can prescribe.* * * * There would otherwise be no security against conflicting regulations of different States. * * * And it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the States was to secure uniformity of regulation against conflicting and discriminating State legislation."

The New Jersey manufacturer of sewing machines and the Florida exporter of oranges are entitled to find the path to the customer equally free in *all* States to which their respective products are taken. Such uniformity, which may be called National uniformity, results, with nothing said, from due adherence to the doctrine that all taxes on commerce are regulations; that all regulation of interstate commerce is vested exclusively in Congress; and that non-regulation by that body imports freedom in the non-regulated subject.

It is believed that the correction of this criterion takes from cases like *Woodruff vs. Parham* all support for their qualified consent to infractions of the exclusiveness of Congressional control over interstate intercourse.

Considered as property, sewing machines of foreign origin are, of course, taxable in Georgia—having due regard to the terms of its own fundamental law—like all other property. So also the man whose business it is to sell them is taxable, like any other person who permanently or temporarily carries on a

taxed occupation. But these conceded powers are always to be taken with an *absque hoc*, that *no tax* is valid, *however expressed or intended*, which *operates* to *burden, regulate or render less than perfectly free* the business of *selling in any one State* the *products of another* State or of foreign countries.

*Hannibal vs. Husen*, 95 U. S., 465.
*Fargo vs. Michigan*, 121 U. S., 230.

In Brown vs. Maryland, 12 Wheat., Chief-Justice MARSHALL said: "It is true that the State may tax occupations," adding, that this is a tax on the business; and continuing, * * * "This the State may do, because no constitutional prohibition extends to it. So a tax on the occupation of an importer is in like manner a tax on importation. * * * This the State has no right to do, because it is prohibited by the Constitution." And elsewhere, p. 448, "We admit this power (the State power to tax) is sacred. * * * We cannot admit that it may be so used as to obstruct or defeat the power to regulate commerce." And it is to be noticed that the learned Chief-Justice does *not* add, "unless it treats aliens and its own citizens alike, in which case it *may* do so." In the same case, at p. 439, he said: "There is no difference in the effect between a power to prohibit the sale of an article and a power to prohibit its introduction;" * * * and he approved the contention that "the importer purchases by the payment of duty to the United States the right to *dispose* of his merchandise." The same right in freedom and perpetuity has been interchangeably granted and accepted between each and all the citizens of the United States, by an eternal compact founded on the expenditure of their commingled blood and treasure.

We now proceed to examine how this question stands on recent and leading decisions of this Court, beginning with the latest.

In McCall vs. California, 136 U. S., 108, LAMAR, J., said, quoting with approval from Lyng vs. Michigan:

"No State has the right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, *for the reason* that such taxation is a burden on that commerce, and amounts to a regulation of it, which belongs solely to Congress."

Citing (page 109) Robbins vs. Shelby Taxing District, 120 U. S., LAMAR, J., says:

"This Court decided that a soliciting of business by the method of 'drumming' for orders to be supplied from another State, constitutes a part of interstate commerce, and that the Statutes of Tennessee imposing a tax upon such business was in conflict with the Commerce Clause of the Constitution of the United States, and therefore void."

In Lyng vs. Michigan, 135, U. S. p. 166, FULLER, C. J., said:

"And in Leisy vs. Hardin, the judgment in which has just been announced, that the right of importation of ardent spirits, distilled liquors, ale and beer from one State into another, includes by implication the right of sale in original packages at the place where the importation terminates; and that the power cannot be conceded to a State to exclude directly or indirectly, the subjects of interstate commerce, or by the imposition of burdens thereon, regulate such commerce *without Congressional permission*. The same rule that applies to the sugar of Louisiana, the cotton of South Carolina, the wines of California, the hops of Washington, the tobacco of Maryland and Connecticut, or the products natural or manufactured of any State, applies to commodities in which a right of traffic exists, recognized by the Laws of Congress, the decisions of the Courts, or the usages of the commercial world. It devolves on Congress to indicate such exceptions as in its judgment or as discretion may demand under particular circumstances."

In Stoutenburgh vs. Hennick, 129 U. S., p. 141, the question arose, under an Act of the Legislature Assembly of the District of Columbia, providing:

"That no person shall be engaged in any trade, business or profession hereinafter mentioned until he shall have obtained a license therefor. * * *"

"Commercial agents shall pay two hundred dollars annually. Every person whose business it is, as agent, to offer for sale goods, wares or merchandise, by sample, catalogue or otherwise, shall be regarded as a commercial agent."

Here as in the leading case of Robbins vs. Taxing

Dist., and in the case now under consideration, *nothing in the law indicated any discrimination founded on the origin of the things sold.* Hennick was convicted for having unlawfully engaged in the business of a commercial agent, to wit, the business of offering for sale, as agent for merchants in Baltimore, certain goods by sample, catalogue or otherwise.

This Court, by FULLER, C. J., said:

"This provision was manifestly regarded as a regulation of a purely municipal character. * * * But is indistinguishable from that held void in Robbins vs. Shelby Taxing District," etc., "as being a regulation of interstate commerce *so far as applicable to persons soliciting, as Hennick was*, the sale of goods on behalf of individuals or firms doing business outside the District.

"The conclusions announced in the case of Robbins were that the power granted Congress to regulate commerce is necessarily exclusive whenever the subjects of it are national or admit only of *one uniform system or plan of regulation throughout the country*, and in such case the failure of Congress to make express regulations is equivalent to indicating its will that the subject shall be left free; that in the matter of interstate commerce the United States are but one country, and are and must be subject to one system of regulation, and not to a multitude of systems: and that a State statute requiring persons soliciting the sale of goods on behalf of individuals or firms doing business in another State to pay license fees for permission to do so is, in the absence of Congressional action, a regulation of commerce in violation of the Constitution. The business referred to is thus definitively assigned to that class of subjects which *calls for uniform rules and* national legislation, and is excluded from that class which can be best regulated by rules and provisions *suggested by the varying circumstances of different localities*, and limited in their operation to such localities respectively (Cooley vs. Phila. Board of Wardens, 53 U. S., 12 How., 299 [13:996]; Gilman vs. Philadelphia, 70 U. S., 3 Wall., 713 [18:96]). It falls, therefore, within the domain of the great, distinct, substantive power to regulate commerce, the exercise of which cannot be treated as a mere matter of local concern, and committed to those immediately interested in the affairs of a particular locality."

In Asher vs. Texas, 128 U. S., p. 129, this Court decided that a law of Texas which, without *distinction of citizenship or origin of goods*, required every commercial traveler or drummer to obtain a license and pay a tax therefor, was repugnant to the Constitution of the United States *when applied to citizens of other States* soliciting trade in Texas. And in Leloup vs. Port of Mobile, 127 U. S., 645, which is a case of a license

tax on an interstate telegraph company, BRADLEY, J., said:

"Ordinary occupations are taxed in various ways, and, in most cases, legitimately taxed. But we fail to see how a State can tax a business occupation when it cannot tax the business itself. Of course, the exaction of a license tax, as a condition of doing any particular business, is a tax on the occupation; and a tax on the occupation of doing a business is surely a tax on the business."

"A great number and variety of cases involving the commercial power of Congress have been brought to the attention of this Court during the past fifteen years which have frequently made it necessary to re-examine the whole question with care; and the result has sometimes been that in order to give full and fair effect to the different clauses of the Constitution, the Court has felt constrained * * * to modify in some degree certain *dicta* and decisions that have occasionally been made in the intervening period" (p. 648).

And Osborn vs. Mobile, 83 U. S., is specially named as a case which would now be decided differently.

Continuing, Mr. Justice BRADLEY says that the fairest and most just construction of the Constitution in all its parts

"leads to the conclusion that no State has the right to lay a tax on interstate commerce in *any* form, whether by duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, and the *reason is*" (not that there is unfair discrimination, but) "that such taxation *is a burden on that commerce*, and amounts to a regulation of it, which *belongs solely to Congress*. This is the result of so many recent cases that citation is hardly necessary" (p. 648).

In Bowman vs. Chicago, 125 U. S., p. 486, MATTHEWS, J., quoted Hall vs. De Cuir, 95 U. S., 485, which was a case of a carrier, as follows:

"We think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress."

And again, p. 630, quoting from Brown vs. Houston, 114 U. S.:

"The power of Congress over commerce among the States is certainly so far exclusive that no State has power to make any law or regulation which will affect the *free and unrestrained* intercourse and *trade* between the States, as Congress has left it, or which will impose any *discriminating* burden or tax upon the citizens or pro-

ducts of other States, coming or brought within its jurisdiction. All laws and regulations are restrictive of natural freedom to some extent; and, where no regulation is imposed by the Government, which has the exclusive power to regulate, it is an indication of its will that the matter shall be left free. So long as Congress does not pass any law to regulate commerce among the several States, it thereby indicates its will that that commerce shall be left free and untrammelled; and *any regulation of the subject* by the States is repugnant to such freedom. This has frequently been laid down as law in the judgments of this Court."

And quoting p. 497, from Robbins vs. Shelby, etc., 120 U. S.:

"It is strongly urged, *as if it were a material point* in the case, that no discrimination is made between domestic and foreign drummers—those of Tennessee and those of other States; that all are taxed alike. But that does not meet the difficulty. *Interstate commerce cannot be taxed at all*, even though the same amount of tax should be laid on domestic commerce, or that which is carried on solely within the State. This was decided in the case of the State Freight Tax, 82 U. S."

In the same case FIELD, J., p. 505, cites, with approval, from Brown vs. Maryland:

"If this power reaches the interior of a State, and may be there exercised, *it must be capable of authorizing the sale of those articles which it introduces*. Commerce is intercourse; one of its most ordinary ingredients is traffic. It is inconceivable that the power to authorize this traffic, when given in the most comprehensive terms, with the intent that its efficacy should be complete, should cease at the point when its continuance is indispensable to its value. To what purpose should the power to allow importation be given, unaccompanied with the power to authorize a sale of the thing imported? Sale is the object of importation, and is an essential ingredient of that intercourse of which importation constitutes a part. It is as essential an ingredient, as indispensable to the existence of the entire thing then, as importation itself. * * * Congress has a right not only to authorize importation, but to authorize the importer to sell. * * * The power claimed by the State is, in its nature, in conflict with that given to Congress. * * * We think, then, that if the power to authorize a sale exists in Congress, the conclusion that the right to sell is connected with the law permitting importation, as an inseparable incident, is inevitable. * * * *We suppose the principles laid down in this case to apply equally to importations to a sister State.*"

Continuing, Mr. Justice FIELD says, p. 506:

"There is great difficulty in drawing the line precisely where the commercial power of Congress ends and the power of the State begins. The same difficulty was experienced in Brown vs. Maryland, in drawing a line between the restriction on the States to lay a duty on imports and their acknowledged power to tax persons and property. In that case the Court said that the two, the power and

the restriction, though indistinguishable when they did not approach each other, might, like the intervening colors between white and black, approach so nearly as to perplex the understanding as colors perplex the vision, in marking the distinction between them; but as the distinction existed, it must be marked as the cases arise. And after observing that it might be premature to state any rule as being universal in its application, the Court held, as sufficient for that case, that when the importer had so acted upon the thing imported, that it had become incorporated and mixed up with the mass of property in the country, it had lost its distinctive character as an import, and had become subject to the taxing power of the State: but that while remaining the property of the importer in his warehouse in the original form or package in which it was imported, a tax upon it was plainly a duty on imports."

In Philadelphia, &c., vs. Penna., 122 U. S., p. 339, BRADLEY, J., said, referring to the State Freight Case, 15 Wall.:

"The Court in its opinion took notice of the fact that *law was general in its terms, making no distinction between freight transported wholly within the State and that which was destined to, or came from, another State.* But it was held that this made no difference. The law might be valid as to one class, and unconstitutional as to the other. On this subject Justice STRONG said: 'The State may tax its internal commerce: but if an act to tax interstate or foreign commerce is unconstitutional, it is not cured by including in its provisions subjects within the jurisdiction of the State. Nor is a rule prescribed for carriage of goods through, out of, or into a State any the less a regulation of transportation because the same rule may be applied to carriage which is wholly internal.' This last observation meets the argument that might be made in the present cases namely, that *the law is general in its terms*, and taxes *receipts for all transportation alike making no discrimination* against receipts for interstate or foreign transportation, and hence cannot be regarded as a special tax on the latter. The decision in the case cited shows, that *this does not relieve the tax from its objectionable character.*"

In a later portion of that opinion Mr. Justice BRADLEY quotes and reinforces the powerful observations of Chief-Justice MARSHALL in Brown vs. Maryland, touching the consequences which might result from an allowance to the State of any power to tax interstate or foreign commerce.

In *Robbins vs. Taxing District* of Shelby County, 120 U. S., Mr. Justice BRADLEY, formulating the conclusions deducible from previous cases, declared it to be an established principle that the only way in which commerce between the States could be legitimately

affected by State laws was when the police power was exerted for the protection of public health, etc., or, incidentally, by the imposition of authorized taxes, and he added:

"But in making such internal regulations a State cannot impose taxes * * * upon property imported into the State from abroad, or from another State, and not yet become part of the common mass of property therein; * * * and no regulations can be made directly affecting interstate commerce."

The facts of that case only required a decision on the question, "Whether it is competent for a State to levy a tax or impose any other restriction upon the citizens or inhabitants of other States, for selling or seeking to sell their goods in such State *before they are introduced therein.*" The decision exhibits therefore a guarded limitation of the question decided, to the facts of the case; but for which *Robbins vs. The Taxing District* of Shelby would be absolutely conclusive of every question involved in this case.

Looking to the substance of things, no difference can be found between those acts of commerce in which the sale and delivery are simultaneous, and those in which, for the convenience of either party, the delivery is postponed. But even if this is not self-evident, no argument is needed; for *Brown vs. Maryland*, which furnishes the foundation for all the doctrine on this topic, was a case of goods first imported, and thereafter sold. As foreign and interstate commerce stand on the same footing, deriving their protection from the same constitutional terms, *Brown vs. Maryland* is in this and in every other essential respect exactly like the Singer Manufacturing Company vs. Wright.

In Gloucester Ferry Co. vs. Commonwealth of Penna., 114 U. S., 196, this Court decided that a ferry used as an agency of commercial intercourse between States bordering on dividing waters could not be taxed, even on its capital stock, by either State.

If, then, the means for carriage are free because carriage is an adjunct of commerce, the sale of the thing carried—commerce in its last analysis—must, of course, be free.

In Moran vs. New Orleans, 112 U. S., 74, which was a case of a license tax on tow-boats running from New Orleans into the Gulf of Mexico, MATTHEWS, J., says :

> "It is a charge explicitly made as the price of the privilege of navigating the Mississippi River between New Orleans and the Gulf in the coastwise trade; as the condition on which the State of Louisiana consents that the boats of the plaintiff in error may be employed by him according to the terms of the license granted under the authority of Congress. The sole occupation sought to be subjected to the tax is that of using and enjoying the license of the United States to employ these particular vessels in the coasting trade; and the State thus seeks to burden with an exaction, fixed at its own pleasure, the very right to which the plaintiff in error is entitled under and which he derives from the Constitution and Laws of the United States."

In the careful building up of the law upon this important subject, judicial opinion seems to have formed in *strata*; and, descending through the upward develop- of sound opinion we reach, in *Guy vs. Baltimore*, 100 U. S., and *Welton vs. Missouri*, the *stratum* in which the desire to compromise between conflicting powers—to reconcile the taxing power of the State on the one hand, and the absolute right of Congress to hold all interstate commerce free from State burdens on the other,—seems most active.

But were this not so, the present case would still be within the saving condtions as to discrimination to which the Court gave weight in *Guy vs. Baltimore*.

In *Welton vs. Missouri* we find this Court employing language of the clearest, most exclusive and uncompromising character in asserting what might be called the exclusive exclusiveness of Congressional authority; but at the same time giving a sort of side recognition to the element of "discrimination" (a thing which was very natural to do in that case, where there was a very

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offensive discrimination) as something which might modify the ultra character of that exclusiveness. The Court says (p. 278):

"The general power of the State to impose taxes in the way of licenses upon particular pursuits and occupations within its limits is admitted, but, like all other powers, must be exercised in subordination to the requirements of the Federal Constitution. Where the business or occupation consists in the sale of goods, the license tax required for its pursuit is, in fact, a tax upon the goods themselves. If such a tax be within the power of the State to levy, it matters not whether it be raised directly from the goods or indirectly from them through the license to the dealer; but if such tax conflicts with any power vested in the Congress by the Constitution of the United States, it will not be any the less invalid because enforced through the form of personal license."

And at page 279 it is said:

"So in like manner the license tax exacted by the State of Missouri from dealers in goods which are not the product or manufacture of the State, before they can be sold from place to place within the State, must be regarded as a tax upon such goods themselves; and the question presented is, whether legislation *thus discriminating* against the products of other States in the conditions of their sale by a certain class of dealers is valid under the Constitution of the United States."

If we rightly understand the present position of this Court, the question as stated includes a term which does not properly belong in it. It should have been: "Whether legislation imposing a tax or burden upon the introduction of the products of other States, &c., is valid."

At page 280 the Court says:

"Where the subject to which the power applies is national in its character, or of such a nature as to admit of uniformity of regulation, the power is exclusive of *all* State authority."

And again on page 280:

"The power of the State to exact a license tax of any amount being admitted, no authority would remain in the United States or in this Court to control its action, however unreasonable or oppressive. Imposts operating as an absolute exclusion of the goods would be possible, and all the evils of discriminating State legislation, favorable to the interests of one States and injurious to the interests of other States, a case which existed previous to the adoption of the Constitution, might follow, and the experience of the last fifteen years shows would follow, from the action of some of the States."

From *Brown vs. Maryland*, in which a State tax on the sale of foreign imported goods was restrained, simply because it trenched upon this exclusive control, down to the later cases—let us say *Asher vs. Texas*—we pass over a period in which the idea of an exclusive control which absolutely did exclude, and the idea of another kind of exclusive control, which was liable under certain circumstances not to be entirely exclusive, seem to have been illogically confounded. The later cases indicate that this Court has now passed the stage at which it is disposed to compromise the Constitutional condition—exclusive control in Congress—and has come to recognize an unqualified necessity for upholding the exclusiveness of that power, wherever the subject in question is national and admits of uniform commercial regulation throughout the entire Union. This doctrine,—freed of fallacies about discrimination, or any other way of denying to the citizens of the several States the rights of citizens of each of the States,—is most clearly expressed in *Asher vs. Texas* and *Robbins vs. Taxing District*, and seems to have prevailed at last as a survival of the fittest.

But in the case, now at bar for judgment, there is a furtive and dangerous effort at discrimination; not in terms, but by "operation." This is made very clear at page 5 of the Brief of Mr. Hillyer. It seems that there are *no* sewing machine companies *in* Georgia; that there are wholesale dealers there who are not sewing machine companies; that there are sewing machine companies, *outside of the State*, who sell within it by *retail*; and that there are other retail dealers there, not sewing companies or wholesale dealers.

Availing of this actual situation, the Legislature, at the instance, doubtless, of the small traders and storekeepers throughout the country, who naturally would seek to monopolize the retail trade in these articles, has arranged the tax so that (1) all wholesale dealers pay two hundred dollars a year, and ten dollars a month

for each agent; (2) all sewing machine companies, wholesale *or retail*, pay the like tax; (3) dealers who are neither "sewing machine companies" nor "wholesale dealers" pay no tax at all. From this it results that the complainant is taxed upon its retail dealing, while resident merchants, of whom there are a large number selling machines by retail, pay nothing. I quote from Mr. Hillyer's excellent Brief (p. 6):

> "But the fact of the situation was that there were large numbers of individuals and firms in the State who were retail dealers in sewing machines, and they were all resident merchants except one only, the Singer Manufacturing Company. The latter were able to pay, and non-resident, and had no friends. The local merchants were numerous, and had votes and many friends, and would be benefited if the Singer Company were driven out of the business. The law is so framed as to tax the Singer Company two hundred dollars general license, and ten dollars license tax for each of its agents; but so as to tax the other hundreds of retail dealers —its rivals in trade—nothing whatever."

Upon this state of facts we may claim, therefore, that the cases of Guy vs. Baltimore and Woodruff vs. Parham, 8th Wallace, *et hoc genus omne*, would be found inapplicable to this case, even if they remained the law of the Court as to the saving effect of non-discrimination on State tax laws.

It is interesting to note that the law, as it now stands, has a perfect expression in two dissenting opinions, one of Mr. Justice NELSON in Woodruff vs. Parham, 8 Wall., p. 146, and one of Mr. Justice BRADLEY in Wood vs. Maryland, 12 Wallace, 432.

In Machine Company vs. Gage, already referred to at page 6, 100 U. S., 677, a statute of the State of Tennessee provided: "All peddlers of sewing machines and selling by sample shall pay a tax of ten dollars." This was upheld by the Supreme Court of the State, on the ground "that the law taxing the peddlers of such machines levied the tax upon all peddlers of sewing machines *without regard to the place of growth or produce of material or of manufacture.*"

Mr. Justice SWAYNE said: "We are bound to regard this con-

struction as correct, and to give it the same effect as if it were a part of the statute:" adding, (679) "In all cases of this class to which the one before us belongs it is a test question whether there is any discrimination in favor of the State or of the citizens of the State which enacted the law. Wherever there is, such discrimination is fatal. Other considerations may lead to the same result."

"In the case before us the statute in question, as construed by the Supreme Court of the State, makes no such discrimination. It applies alike to sewing machines manufactured in the State and out of it. * * * The State, putting all such machines upon the same footing with the tax complained of, had an unquestionable right to impose the burden."

This Court would have had no difficulty in recognizing the fallacy of this reasoning, if the case had been one of a tax by the State of Maine on all oranges, bananas, cotton and cane sugar; for it would have known that such a law was intended to operate as a discrimination. While there is no natural presumption against the production of sewing machines in Georgia, I have given my reasons above for assuming that the Court will find in this case ground on which to assume that a tax on the sale of sewing machines in that State is, up to this time, as certainly a tax on foreign-made goods as would be a similar tax in Maine on cotton and bananas.

The last-named case is still cited in briefs, and should be expressly overruled.

State vs Richards (W. Va.) and State vs Bracco (N.C.) 4 S. E. Reporter 135 & 404.

This brief review of cases shows that the "narrow and transitory interests," denounced by Mr. Madison, persist as an influential motive in the policy of sister States. The least withdrawal of the line of demarcation induces a movement upon the protected field over which Congress has for the general welfare been given exclusive power. Granger laws, internal navigation acts, taxes on drummers, covert discriminations against out-state goods, taxes on sales of imported goods—all of these indicate that the cancer of local selfishness needs the knife.

This case calls for judgment upon a simple right of traffic. There is no need, as in many other cases, to determine whether the thing in question is commerce.

We have not to do with any agency of trade but with trade itself. We have to do with the fundamental act for which all these agencies—bills of lading, telegraphs, vessels and other means of transportation—are invented; the act of trade and interchange.

May the traveling artisan of one State freely offer the product of his labor in another, in exchange for what the citizen of that other has to give?

Or are there circumstances which will justify imposing on him a tax for local benefit at "the commencement of business?"

If the last question is answered affirmatively, does the exclusiveness of Federal control over interstate intercourse exclude? In what respect would the complaint of North Carolina in the Convention (see p. 12) be better cared for under the Constitution than under the Confederation, if Virginia also levied taxes on the internal as well as the interstate transportation of domestic tobacco?

"Those," said Chief-Justice Marshall, in Brown vs. Maryland, 12 Wheat., 446, "who felt the injury arising from this state of things, perceived the necessity of giving control over this important subject to *a single* government."

Free intercourse—trade and commerce—are the very life blood of national unity—the corpuscular attraction by which the social atoms are held together in political mass. The interference with such intercourse which this case shows is of very intimate and extended concern, and the instance vividly illustrates the principles involved, because it is so offensive to domestic interests. Of all the devices of man's ingenuity the sewing machine has probably ameliorated human toil and enhanced its product as much as any other. Its benefits cluster by the fireside. It is an intimate interest of home. Whatever hinders or favors its introduction acts intimately and upon the closest domestic concerns. The appellant,

passing over all middle men, offers its machine free from their profits, directly to the farmer's wife and to the housewife and the artisan everywhere. For this purpose its agents visit every farm-house and every door in every town and hamlet in every State in the Union. The effect of the law of Georgia is to make those visits difficult, and may, if it is lawful at all, be so increased as to cut off this desirable intercourse entirely. For, the power to tax is a power to prohibit.

Is it not clear that there is no safe ground for compromising, over the conditions of national intercourse? Is there anything more important from generation to generation than that the intercourse of the people of these States in the daily business of life, should be absolutely free?

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THE SINGER MANUFACTURING COMPANY,

APPELLANT,

VS.

WILLIAM A. WRIGHT, COMPTROLLER GENERAL OF GEORGIA, *et al.*, APPELLEES.

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No. 69, IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1890.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

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# BRIEF OF CLIFFORD ANDERSON,

COUNSEL FOR THE APPELLEES.

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J. W. BURKE & CO., PRINTERS, MACON, GA.

1st. Appellant claims that the 17th section of paragragh 2 of the Tax Act, passed by the Legislature of Georgia, in 1886, is violative of the "commerce clause" of the Constitution of the United States.

The cases cited to support this contention are, Asher vs. Texas, 128 U. S., 129; Robbins vs. Shelby County, 120 U. S., 489, and Leloup vs. the Port of Mobile, 127 U. S., 640.

The first two were cases where agents of the non-resident owners solicited orders, to be filled in the States in which the owners of the articles sold resided. The articles sold were not stored, or kept for sale, in the State where the orders were solicited.

In this case, the Bill states that the Appellant "has one principal office, and employs forty or fifty, or more, agents in said State." It is not alleged that orders are solicited by these agents for sewing machines furnished in New Jersey. (See page 1, printed record). The inference is that the orders are filled at the "principal office" in Georgia. This being so, the *commerce* carried on is *State* and not *inter*-State commerce. See License Tax Cases, 5 Wall., 462. On pages 470–1, the Chief Justice, delivering the opinion, says:

"But very different considerations apply to the internal commerce or domestic trade of the States. Over this commerce and trade Congress has no power of regulation, nor any direct control This power belongs exclusively to the States." See, also, Munn vs. Illinois, 94 U. S., 113 (7th head-note), and what the Court says on page 135.

2d. It is contended by Appellant that the tax is obnoxious to the fourteenth amendment of the Constitution of the United States. It is insisted that the Act under which the tax is imposed is not "uniform on the same class of subjects"—that it discriminates against Appellant and thereby deprives it of "the equal protection of the law."

The Constitution of Georgia requires taxation to be "uniform on the same class of subjects." If the Act complained of is obnoxious to this provision of the State Constitution, it violates the fourteenth amendment to the Constitution of the United States. If not so obnoxious, it is not in conflict with the said fourteenth amendment.

The power to classify the subjects of taxation belongs exclusively to the Legislature. The doctrine is thus stated in Cooley on Taxation (2d edition), p. 165: "The Legislature must decide when and how and for what public purpose a tax shall be levied, and must select the subjects of taxation. All this is legislative, and the legislative conclusion in the premises must be accepted as proper and final."

In 64 Ga. Reports, p. 128, Judge Bleckley, (the present Chief Justice,) delivering the opinion of the Court, says: "The constitutional requirement that 'all taxation shall be uniform on the same class of subjects,' is not infringed by the ordinance in the provision we are considering. The producer whose trade is incident to production, and the middleman, whose trade is intermediary between the producer and the consumer, belong, not to the same class, but to different classes of subjects in a scheme of taxation; at least the difference is wide enough to justify, if not to compel, its recognition in shaping the ordinance." As Judge Newman says, (see p. 34, printed record,) "the context shows that the matter under discussion, is sales by the producer as a subject of taxation," and sales by one who buys from the producer. It is, in effect, the same thing as if he had said, "sales by the *manufacturer*, whose trade is incident to production, and sales by the middleman, whose trade is intermediary between the manufacturer and the consumer, belong not to the same class but to different classes in a scheme of taxation."

Nor is the uniformity clause of the State Constitution, under consideration, violated by the failure of the Legislature to impose a tax on some occupations or classes of business, whilst it does on others.

In the second head-note of the case just cited from 64 Ga. R., 128, the Court rules that "the validity of this specific tax is not impaired by exempting the wagon used in delivering milk from dairies on country farms, since the city may tax one class of business and exempt another, or may tax different occupations and their instruments unequally."

If the taxing power may *exempt* one class and tax another, *a fortiori* the omission (probably unintentional) to tax one class does not render invalid a tax imposed on another class. In Curtis vs. the Mayor, etc., of Albany, 60 Ga., 597, it is

(3) The case at bar is one of *discrimination; discrimination* of the very worst kind. Upon a perusal of the record it is impossible to escape the proposition that not one dollar of tax was ever intended to be collected, or was collected, from sewing machine dealers, except from non-residents. We say the act was formed for that purpose, and it accomplished that purpose.

But whatever controversy there may be as to discrimination between resident and non-resident dealers or manufacturers, we say there is substantially no dispute as *to discrimination against appellant as a corporation or company.* There is no dispute about the facts. Judge Newman says, in the written opinion filed (see page 30 of printed record, at bottom): "The answer denies generally the allegations in the bill, *but the proof submitted shows them to be substantially true.*" By the allegations in the bill and the proofs, out of nearly 300 retail dealers in sewing machines, appellant is the only one which pays the exactions complained of. The burden of these exactions on appellant amount to several thousand dollars. (See copies of tax *fi. fas.* filed with record.) The other retail dealers, appellant's competitors in the business, *pay nothing whatever.* Astounding as the statement may be, it is, nevertheless, literally true that this so-called tax act divides sewing machine dealers into two classes—wholesale dealers and retail dealers. It professes to tax all wholesale dealers, and it exempts all retail dealers, *except appellant.* There is also a special classification under the name of "companies." But the fact remains (unlike anything, and we say worse than anything, in any statute of the kind ever brought before this Court), *one person is singled out* and made to pay in so-called taxes, for its agents, these large sums, when no other person whatever, in the State or out of it, natural or artificial, is made to pay one solitary dime of such exactions, the same falling on appellant, and on appellant alone. Counsel for

appellee virtually admits in his brief that discriminations exist, and seeks to excuse them on the statement that the omissions from which they result were unintentional. He says, on page 4 of his original brief: "In this case the omissions complained of are probably attributable to the mistaken judgment of the Comptroller-General, * * but even if attributable to the unintentional error or judgment of the Legislature, the effect would be substantially the same." The title of the act in question shows it to be a bill to raise revenue for the support of the government; and we submit that any idea that the exaction should be laid on one person in the business, and two hundred and fifty or three hundred other persons exactly in the same business, and under the same conditions, should be exempted, by *accident or unintentionally*, is absurd. But we reply further that the Legislature cannot violate the Constitution of the United States at all, and this exaction cannot be upheld on the plea of accident or mistake. If this tax act is void it must be so declared, no matter how it happened or how the Legislature came to pass it.

The attempt is made to uphold it on the ground that the complainant is a corporation, and that all corporations are "placed in a class with wholesale dealers and taxed uniformly." (Judge Newman's opinion, page 33 of printed record at bottom.) But the cases stated on our original brief show conclusively and overwhelmingly that the Fourteenth Amendment applies to corporations as well as to individuals; and the conclusion follows that where these so-called taxes are put on this corporation here complaining, and nothing on persons doing exactly the same business, and in every way similarly situated, this is a discrimination and such a denial of the equal protection of the laws as makes a plain violation of the Fourteenth Amendment, and also a plain violation of the "Uniformity Clause" of the State Constitution.

(4) The position taken by Mr. Anderson at the partial hearing in this cause had on the 14th instant, to the effect that the State has now corrected anything erroneous or illegal in the statute of which we complain, is not well taken.

The Act of 1886 was enacted as a scheme of taxation for only two years, and at the end of 1888 expired, by its own limitation, and without the necessity of any repeal. The next tax act is short and simple, as applied to sewing machine dealers, and contains no discrimination, not covering more than three lines of a short paragraph, (see Ga. Laws, 1888, page 22, clause 16), and being all that is needful where the Legislature was not seeking to discriminate. But at the end of two years more the Legislature went back to its old methods, and in the act passed on the 26th of December, 1890, the 9th section thereof, enacted as follows:

"SEC. IX. *Be it further enacted*, That every sewing machine company selling or dealing in sewing machines, by itself or its agents, in this State, and all wholesale and retail dealers in sewing machines selling machines manufactured by companies that have not paid the tax required herein, shall pay two hundred dollars for each fiscal year or fractional part thereof, to be paid to the Comptroller-General at the time of commencement of business, and said companies or dealers shall furnish the Comptroller-General with a list of all agents authorized to sell machines of their manufacture or under their control; and shall pay to said Comptroller-General the sum of five dollars for each of said agents for each fiscal year or part thereof, for each county in which said agent may do business for said company. Upon the payment of said additional sum the Comptroller-General shall issue to each of said agents a certificate of authority to transact business in the State, and such companies, dealers and agents, having paid the taxes required herein, shall be exempted from any county or corporation tax for selling said sewing machines. Before doing business under this Act, all sewing machine agents shall be required to register their names with the Ordinaries of those counties in

which they intend to operate, and exhibit to said Ordinaries their license from the Comptroller-General, and to keep such license pasted on their vehicles or place of business. Wholesale or retail dealers in sewing machines shall be required to pay the tax provided herein for each manufacture of sewing machines sold by them, except the manufactures of such companies as have paid the tax required by this Act. All unsold sewing machines belonging to sewing machine companies, dealers, their agents or others, shall be liable to seizure and sale for payment of such license fees and tax. Any person who shall violate the provision of this section shall be liable to indictment for misdemeanor, and, on conviction, shall be fined not more than five hundred dollars and not less than one hundred, in the discretion of the Court trying the same. If said fine is not paid within the time prescribed by the Court, such person so fined shall be imprisoned as prescribed in Section 4310, of the Code. None of the provisions of this section shall apply to licensed auctioneers selling second-hand sewing machines, or to officers of the law under legal process, or to merchants buying and selling machines on which a license tax has been paid as herein provided, and who keep the said machines and sell and deliver them at their places of business, such sales not being on commission."

This is like the 17th clause in the orignal Act of 1886, out of which this litigation grew. The disposition to discriminate against the stranger, and in favor of the local dealer, again shows itself, especially in the last three or four lines of the section. The State has never formally admitted that she did wrong to tax the Singer Manfg Co. alone out of the hundreds of dealers in the State doing a retail business in sewing machines, and exempting all the others. In fact, Mr. Anderson, as her counsel, and by his briefs, is here before the Court maintaining and defending the constitutionality and validity of the Act of 1886 *as it stands*. We say with emphasis, however, that so far as these later acts, passed in the light of and under the pressure of this litigation, have any place at all in this argument, they *are authority on our side*, and amount to a sort of *admission* by the State that the Act of 1886 was wrong. It was the

latter act, and it was the State's right to pass it, that we attack in our bill. It is the judgment of this Court, not as to these later acts, but that *the Act of 1886* violated the Constitution, which we now invoke.

Respectfully submitted,

GEORGE HILLYER,

Counsel for Appellant.

Supreme Court U. S.
FILED,
APR 2 1891

# THE SINGER MANUFACTURING COMPANY,

APPELLANT,

*vs.*

**W. A. WRIGHT, Comptroller-General of Georgia, et al.,**

APPELLEES.

---

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

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MOTION TO DISMISS APPEAL.

CLIFFORD ANDERSON,
*Counsel for Appellees.*

STATE OF GEORGIA,

COMPTROLLER GENERAL'S OFFICE,

ATLANTA, January 28th, 1891.

I, Wm. A. Wright, Comptroller General of the State of Georgia, do hereby certify, that after the decision was rendered in the Circuit Court of the United States for the Northern District of Georgia, (Judge Wm. T. Newman, United States Judge, presiding,) on the Bill in Equity, filed by the Singer Manufacturing Company, versus William A. Wright, Comptroller of Georgia, and L. P. Thomas, Sheriff of Fulton County, Georgia, praying for an injunction to restrain the collection of certain tax executions issued by said Comptroller General against said Singer Manufacturing Company for taxes due said State for the year which case is now pending on appeal from said decision, in the Supreme Court of the United States, (said appeal having been entered by said Company,) the said Company paid the full amount of taxes for which said executions issued, being the whole amount of taxes then due the said State, and sought to be enjoined from being collected by said bill, to me, as Comptroller General of said State, and no part of the sum or sums of money for which said executions issued now remains unpaid. Said taxes were paid under protest by said Company.

Witness my official signature under the seal of my said office, this the day and year first aforesaid.

WM. A. WRIGHT,

[SEAL.] *Comptroller General.*

THE SINGER MANUFACTURING COMPANY,

APPELLANT,

*vs.*

W. A. WRIGHT, Comptroller-General of Georgia, *et al.*

APPELLEES.

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*Appeal in the Supreme Court of the United States from the Circuit Court of the United States for the Northern District of Georgia.*

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Counsel for the Appellees in the above stated case represent to the Court that the executions issued by the Comptroller-General for taxes due the State of Georgia, when the bill in said case was filed by the Appellant, and to enjoin the collection of which taxes was the relief sought by said bill, have been paid by said Appellant since the decree appealed from was rendered—as shown by the certificate of said Comptroller-General attached, as an exhibit hereto.

Counsel for Appellees move, therefore, that said appeal be dismissed for the reason that abstract questions of law only are now involved in said case, and that the only remedy remaining to said Appellant is to bring a suit against the said Comptroller-General for the recovery of said taxes so paid tohim under protest.

CLIFFORD ANDERSON,
*Counsel for Appellees.*

Office Supreme Court U. S.
FILED.
APR 13 1891
JAMES. H. McKENNEY,
CLERK.

THE SINGER MANUFACTURING COMPANY,

APPELLANT,

vs.

W. A. WRIGHT, COMPTROLLER GENERAL, *et al.*

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IN THE SUPREME COURT OF THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT FOR THE NORTHERN DISTRICT OF GEORGIA.

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# MOTION TO DISMISS APPEAL.

BRIEF OF CLIFFORD ANDERSON,
COUNSEL FOR MOVANTS.

THE SINGER MANUFACTURING COMPANY,

APPELLANT, VS.

W. A. WRIGHT, COMPTROLLER GENERAL OF GEORGIA, ET AL.

*Appeal from the Circuit Court of the United States for the Northern District of Georgia.*

IN THE SUPREME COURT OF THE UNITED STATES.

Brief of CLIFFORD ANDERSON, Counsel of Appellees, in support of the motion to dismiss.

The decree appealed from dismissed appellant's bill, in which the relief prayed was for a perpetual injunction against the collection of certain taxes. After this decree, appellants paid the whole amount of the tax, the collection of which was sought to be enjoined, and entered their appeal.

1. If the decree is reversed, the judgment would be inoperative. There is nothing now to enjoin.

2. In Merriam vs. Haas, 3 Wallace, 687, the bill was filed to forelose a mortgage on an alleged indebtedness of $6,000.00 and interest. Defendant admitted an indebtedness of $4,000.00 only, with interest, and a decree was rendered for the amount admitted to be due, and costs. Complainant appealed, and then had execution issued and collected the $4,000.00 and interest thereon. Motion to dismiss was refused.

There was only part payment of the amount claimed.

In U. S. vs. Dashiel, 3, Wallace, 688; Plaintiff obtained judgment for part of the sum sued for, and had execution issued and collected a part of the amount for which judgment was given. He then sued out writ of error. A motion to dismiss was denied, (three Justices dissenting) on the ground that there had been only a partial, not a complete, satisfaction of the judgment.

The inference is that a complete satisfaction of the judgment would have furnished good ground for dismissal.

In the present case the appellant has voluntarily put itself in a position where the Court cannot grant the relief it prays, nor relief of any kind.

CLIFFORD ANDERSON,

*Counsel for Appellees.*

EVENING POST JOB PRINTING HOUSE—N. Y.

# Supreme Court of the United States.

THE SINGER MANUFACTURING COMPANY,
Complainant,

vs.

WILLIAM A. WRIGHT, Comptroller, *et al.*

## POINTS FOR COMPLAINANT ON MOTION TO DISMISS.

### Facts.

The appeal which the respondents now move to dismiss, is from a decree refusing to enjoin the respondents in their official capacities as Comptroller and Sheriff in the State of Georgia, from collecting a State tax for the years 1887 and 1888, imposed for those years upon the appellant by a law of the State which the appellant claims to be unconstitutional. The tax is $200 per annum, plus $10 for each agent, of whom the bill alleges there are forty and upwards.

Law of 1886, Dec. 22, Sec. 17.
Transcript, fols. 2, 4.

The law specifically declares that "all sewing "machines belonging to such companies, &c., in the "possession of such companies, &c., or their agents

" or others, shall be liable to seizure and sale for the " payment of such * * * tax." And a violation of the provisions of the section is punishable by indictment for misdemeanor and a fine of from $100 to $500, enforcible by imprisonment.

Trans., 4, 5.

The bill alleges that the defendant Comptroller notified the complainant to appear and pay the $200 tax for 1887, with the $10 tax for each agent, and threatened, in case of refusal, to issue execution for the same. The bill also charged that such execution had already been lodged in the hands of the defendant Sheriff, with intention to levy and seize the property of the complainant by virtue thereof.

Trans., fols. 10, 11.

No answer appears in the record on the part of the defendant Sheriff. The answer of the Comptroller controverted none of the above allegations, and alleged that "defendant stated to complainant, in " substance, that he should enforce the law and en- " deavor to collect taxes from those who were liable " under the law. This is the defendant's only ob- " ject: to do his duty by enforcing the law."

Trans., fol. 20.

The decree was entered May 18, 1887, and appeal was taken June 1, 1887.

Trans., fols. 71, 87.

After the entry of the decree dismissing the injunction bill six *fi. fas.* were issued by the Comptroller, and under them the taxes imposed by the act were collected by levies upon sewing machines belonging to the appellant, who after the levies, and under written protest and notice of intention to sue for restitution, paid the amount in satisfaction of the writ.

The writ, levy and entry of satisfaction thereupon were each in the following form:

"STATE OF GEORGIA, } Comptroller-General's
"Fulton County, } Office.

"*To all and singular, the Sheriffs and other "lawful officers of this State:*

"You are hereby commanded, that of all "goods and chattels, lands, tenements and "franchises of the Singer Manufacturing Com- "pany, a corporation doing business in this "State, you cause to be made the sum of three "hundred and eighty dollars, as its tax for the "year 1887 upon its agents, as required by Act "of General Assembly, approved December, 22, "1886, and all costs, and that you pay over said "sum of money to the Comptroller-General of "said State, at his office in Atlanta, Ga., and "return thereto this execution, with your act- "ings and doings entered thereon.

"Witness, W. A. Wright, Comptroller-Gen- "eral of said State, under his official hand and "seal of said office.

"Issued this, the first day of June, 1887.

"WM. A. WRIGHT,
"Comptroller of Georgia.

"Levied this *fi. fa.* on nine ¾ Cabinet Singer "Sewing Machines as the property of the Singer "Manfg. Co., this June 3d, 1887.

"(Signed) A. M. PERKERSON,
"Deputy Sheriff."

"STATE OF GEORGIA, } ss.:
"Fulton County, }

"Received of the defendant, The Singer "Manf'g Co., $384.50, in full of principal, "interest and costs required by the within *fi.* "*fa.*, the said defendant, The Singer Manf'g "Co., declaring that this *fi. fa.* and the said "tax are illegal and it not liable for the same "or any part thereof; and said payment is "made under protest, and under compulsion of "this writ, levy and seizure as above, and said

" defendant declaring a purpose to demand, sue
" for and recover back said taxes, the amount
" now paid as aforesaid, this June 3d, 1887.
" (Signed) A. M. PERKERSON,
" Deputy Sheriff."

## Points.

The payment of the disputed tax was involuntary, and affords no ground for inferring any waiver, or release of errors, or other admission by the appellant inconsistent with the continued prosecution of its appeal.

I.—This Court has repeatedly decided that a payment by a party "to release his property from detention" is not a voluntary payment.

1. In R. R. Co. *v.* Comrs., 98 U. S. 543, it was said, citing the cases:

> " Where a party pays an illegal demand with
> " a full knowledge of all the facts which ren-
> " der such demand illegal, without an immedi-
> " ate and urgent necessity therefor, or unless *to*
> " *release his* person or *property from detention*,
> " or to prevent an immediate seizure of his per-
> " son or property, such payment must be deemed
> " to be voluntary and cannot be recovered
> " back."

2. In Cleaveland *v.* Richardson, 132 U. S., 318, the Court held that the payment before judgment of a claim secured by an attachment was not a voluntary payment, and so not forbidden by an agreement not to voluntarily pay. The Court cites the case of Carey *v.* Barrett, 4 Common Pleas Division, 379, where it was held that a payment made after suit brought,

there being no defense, "was not the less a payment "under process of law because the debtor did not "wish to incur the expense of a judgment and exe- "cution." The Court, at p. 333, states that—

> "In Radich *v.* Hutchins, 95 U. S., 210, 213, "it is laid down that where there is an actual "or threatened exercise of power possessed over "the property of another by the party exacting "or receiving a payment, there is coercion or "duress, which will render a payment involun- "tary; and the case of Mayor of Baltimore *v.* "Lefferman, 4 Gill, 425, is cited, which holds "that when a payment is made to emancipate "property from an actual and existing duress "imposed upon it by the party to whom the "money is paid, the payment is to be regarded "as compulsory."

**II.**—Submission to legal process after exhausting the only remedy in the law which could prevent its issue or enforcement, was no waiver, either of the right to enforce restitution by action or by appeal, or of the right to appeal from the original refusal of the remedy. The complainant resisted first in court and then out of court, and on each occasion to the *then* extent of its power. Its ill success showed no acquiescence on its part, but was eloquent of resistance persisted in and intended to be continued. "Resistance to the extent of a man's power," says a distinguished jurist, "is certainly a new kind of waiver."

Avery *v.* Slack, 17 Wendell, 87.

This principle was applied in O'Hara *v.* MacConnell, 93 U. S., 150, 154, where the Court refused to dismiss the appeal on a similar claim. We quote from the opinion:

"It is said, that after making the deed which the

"Court ordered, the appellant is bound by it, and "cannot now prosecute this appeal.

"The principle is unsound. The deed recites on "its face that it is made under the order of the "Court. The parties must either have obeyed the "order of the Court, or taken an appeal and given "a *supersedeas* bond in a sum so large that they were "probably unable to do it.

"'In no instance within our knowledge,' says the "Court, in Erwin *v.* Lowry, 7 How., 184, 'has an "appeal or writ of error been dismissed on the as-"sumption that a release of errors was implied from "the fact that money or property had changed "hands by force of the judgment or decree. If the "judgment is reversed, it is the duty of the Court to "restore the parties to their rights.' That was a "case where the appellant received the money "which by the decree he recovered of the appellee, "and is, therefore, a stronger case than the present, "as his action would seem to ratify the decree."

So, in Merriam *v.* Haas, 3 Wall, 687, complainant below, appellant here, was held not to have subjected his appeal to dismissal by enforcing the decree in so far as it was in his favor. The bill was for foreclosure of a mortgage; the amount claimed was upwards of $6,000; but the decree was for $4,000, and refused the remaining $2,000. After appeal taken there was a sale. Before its confirmation the defendant paid into Court the $4,000 which complainant received and gave receipt for. Defendant's motion to dismiss overruled.

A similar decision on a writ of error will be found, in U. S. *v.* Dashiel, 3 Wall, 688.

In Hayes *v.* Nourse, 107 N. Y., 577, a judgment was paid without execution being issued to collect it. Subsequently the defeated defendant brought an appeal in the nature of a writ of error. Motion to demiss denied.

The Court says (pp. 578-9):

"The defendant's practice in paying the judg-"ment before appealing from it, is not to be

"condemned. It is rather to be encouraged." * * * "He should not, by a temporary sub-"mission to the decision of the Court, be placed "in a worse position than if he awaited execu-"tion and settled it with Sheriff's fees. In Dyett "*v.* Pendleton (Court of Errors, 8 Cow., 326), "an execution had, in fact, issued, but the Court "held that even a voluntary payment of the judg-"ment would have been no reason against a writ "of error, and in a subsequent case, Clowes *v.* "Dickenson (8 Cow., 328), Spencer, Senator, "referring to the decision just cited, says: 'I "'feel confirmed on reflection that no matter "'how the money is paid or collected, this can-"'not affect the right to try error on appeal.' "To the same effect are many subsequent decis-"ions, and it must be deemed too well settled "by authority to require further discussion, "that a party against whom a judgment has "been rendered is not prevented from appealing "to this Court by the fact that he has paid the "judgment, unless such payment was by way "of compromise, or with an agreement not to "take or pursue an appeal (1 Code Rep. (N. S.), "415; Ct. of App., 1852; Sheridan *v.* Mann, 5 "How. Pr., 201; 42 Barb., 441)." * * * "The same rule prevailed before the Code, and "it was applied whether the judgment was paid "before or after writ of error brought. The "only difference was in the manner of proceed-"ing to inform the Court of the facts on which "the right to restitution depended (Tidd's "Practice, 1033, 1034; Sheridan *v.* Mann, *supra*)." * * * "The motion to dismiss the appeal "should be denied."

III.—In the case of an appeal in New Jersey, from a denial of a temporary injunction, it was urged that the act sought to be enjoined had been accomplished. Held, that this did not prevent a review of the order appealed from. The Court say:

"This right of appeal from the denial of a pre-
"liminary injunction is not taken away by the fact
"that the act sought to be enjoined may possibly
"have been already accomplished, and in some re-
"spects, therefore, an order of reversal might be in-
"efficacious. The Court may, on such an appeal,
"hear and adjudge the right upon which a prelimi-
"nary injunction should have been granted."

Terhune *v.* Midland R. R., 9 Stewart N. J. Chancery R., 319.

**IV.**—The present motion is clearly distinguishble from the case of Little, Recr., *v.* Bowers, 134 U. S., 547. It there appeared that on *certiorari* certain assessments for taxes were confirmed. The Federal question involved in the writ of error in this Court was whether these assessments impaired the obligation of a contract.

It appeared on the motion to dismiss that the taxes had been reduced and readjusted under an act passed after the *certiorari*, and this reduced amount had been paid *before* any warrant had been issued for their collection and *several months before such warrant could have been issued*, or any proceedings to compel payment could have been commenced.

This Court in dismissing the writ of error held that the taxes were not paid under duress. "Their "payment under the circumstances above set forth "was in the nature of a compromise by which the "city agreed to take and the company agreed to "pay a less sum than originally assessed. The "effect of this act was to extinguish the contro-"versy between the parties to this suit."

"This case," said the Court (at p. 556), "is "clearly distinguishable from Robertson *v.* Brad-"bury, 132 U. S., 491. In that case the jury by "returning a verdict in favor of the plaintiff "virtually found that he had been compelled to

"pay the alleged duties assessed against his "goods by the Collector of the Port of New "York *in order to get possession* of them from "the collector. Here there is no question as to "the seizure of goods at all." And the opinion (on p. 555) cites with approval its previous ruling in which it had declared the true rule, viz.: "Where, therefore, a party not liable to taxa- "tion is *called on peremptorily to pay upon such* "*a warrant*, and he can save himself and his "property in no other way than by paying an "illegal demand, he may give notice that he so "pays it by duress and not voluntarily, and by "showing that he is not liable *recover it back.*"

V.—The motion to dismiss should, it is submitted, be denied.

GROSVENOR LOWREY,
GEORGE HILLYER,
Of Counsel for Appellant.

Office Supreme Court U. S.
FILED,
APR 8 1891
JAMES H. McKENNEY

THE SINGER MANUFACTURING COMPANY,

*Appellant,*

*vs.*

W. A. WRIGHT,

*Comptroller-General of Georgia, et al.,*

*Appellees.*

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

PROOFS SUBMITTED BY APPELLANT IN REPLY TO THE MOTION TO DISMISS THE APPEAL.

Constitution Job Print, Atlanta, Ga.

THE SINGER MANUFACTURING COMPANY

vs.

WM. A. WRIGHT, COMPTROLLER GENERAL, et al.

In Equity.

Appeal from the Circuit Court of the United States for the Northern District of Georgia.

Proofs submitted by appellant in reply to the motion to dismiss the appeal.

STATE OF GEORGIA, } COMPTROLLER-GENERAL'S OFFICE.
FULTON COUNTY. }

*To All and Singular, the Sheriffs and other lawful Officers of this State:*

You are hereby commanded, That of all goods and chattels, lands, tenements and franchises of the Singer Manufacturing Co., a corporation doing business in this State, you cause to be made the sum of Nine Hundred and Forty dollars, as its tax for the year 1887 upon the company and its agents, as required by Act of General Assembly, approved Dec., 22, 1886, and all costs, and that you pay over said sum of money to the Comptroller-General of said State, at his office in Atlanta, Georgia, and return thereto this execution, with your actings and doings entered thereon.

Witness, W. A. Wright, Comptroller-General of said State, under his official hand and seal of said office.

Issued, this, the 24th day of May, 1887.

WM. A. WRIGHT,
Comptroller-General of Georgia.

Levied this fi. fa. on twenty-four Sewing Machines as

the property of the Singer Manufacturing Button Hole and Family Co., this 25th of May, 1887.

A. M. PERKERSON,
D. Sh'ff.

STATE OF GEORGIA, }
FULTON COUNTY. }

Rec'd of the defendant, The Singer M'f'g. Co., Nine Hundred and forty-four & 50-100 dollars, in full of principal, interests and costs, required by the within *fi. fa.* The said Defendant, The Singer M'f'g. Co., declaring that this *fi. fa.* and said tax are illegal, and is not liable for the same, or any part thereof, and said payment is made under protest and under compulsion of this writ, levy and seizure as above: and said defendant further declaring a purpose to demand, sue for and recover back said taxes, the amount now paid as aforesaid.

A. M. PERKERSON,
D. Sh'ff

STATE OF GEORGIA, } COMPTROLLER-GENERAL'S OFFICE.
FULTON COUNTY. }

*To all and Singular, the Sheriffs and other Lawful Officers of this State:*

You are hereby commanded, That of all goods and chattels, lands, tenements and franchises of the Singer Manufacturing Company, a corporation doing business in this State, you cause to be made the sum of One Hundred and Twenty Dollars, as its tax for the year 1887 upon its agents, as required by Act of General Assembly, approved December 22d, 1886, and all costs, and that you pay over said sum of money to the Comptroller-General of said State, at his office in Atlanta, Georgia, and return thereto this execution, with your actings and doings entered thereon.

Witness, W. A. Wright, Comptroller-General of said State, under his official hand and seal of said office.

Assessed, this, the 24th day of June, 1887.

WM. A. WRIGHT,
Comptroller-General of Georgia.

Levied this *fi. fa.* on four ⅞ Cabinet Singer Sewing Machines, as the property of the Singer Manufacturing Company, this 29th of June, 1887.

A. M. PERKERSON,
D. Sh'ff.

STATE OF GEORGIA, }
FULTON COUNTY. }

Received of the Defendant, The Singer Manufacturing Company, One Hundred and twenty-four and 50-100 Dollars, in full of principal, interest and costs, required by the within *fi. fa.* The said Defendant, The Singer Manufacturing Co., declaring that this *fi. fa.* and said tax are illegal, and it not liable for the same or any part thereof, and said payment is made under protest and under compulsion of this writ, levy and seizure as above, and said defendant further declaring a purpose to demand, sue for and recover back said taxes, the amount now paid as aforesaid.

This 29th of June, 1887.

A. M. PERKERSON,
D. Sh'ff.

STATE OF GEORGIA, } COMPTROLLER-GENERAL'S OFFICE.
FULTON COUNTY. }

*To all and Singular, the Sheriffs and other Lawful Officers of this State:*

You are hereby commanded, That of all goods and chattels, lands, tenements and franchises of the Singer

Manufacturing Company, a corporation doing business in this State, you cause to be made the sum of Three Hundred and Eighty Dollars, as its tax for the year 1887 upon its Agents, as required by Act of General Assembly, approved December 22, 1886, and all costs, and that you pay over said sum of money to the Comptroller-General of said State, at his office in Atlanta, Ga., and return thereto this execution, with your actings and doings entered thereon.

Witness, W. A. Wright, Comptroller-General of said State, under his official hand and the seal of said office.

Issued this, the first day of June, 1887.

WM. A. WRIGHT,
Comptroller-General of Georgia.

Levied this *fi. fa.* on nine ⅔ Cabinet Singer Sewing Machines, as the property of the Singer Manufacturing Company, this June 3d, 1887.

A. M. PERKERSON,
D. Sh'ff.

STATE OF GEORGIA, }
FULTON COUNTY, }

Received of the Defendant, The Singer Manufacturing Company, three hundred and eighty-four and 50-000 dollars, in full of principal, interest and costs required by the within *fi. fa.* The said Defendant, The Singer Manufacturing Co., declaring this *fi. fa.* and said tax are illegal, and it not liable for the same or any part thereof, and said payment is made under protest and compulsion of this writ, levy and seizure as above, and said Defendant declaring a purpose to demand and sue for, and recover back said taxes, the amount now paid as aforesaid.

This June 3rd, 1887.

A. M. PERKERSON,
D. Sh'ff.

STATE OF GEORGIA, } COMPTROLLER GENERAL'S OFFICE.
FULTON COUNTY. }

*To all and singular, the Sheriffs, and other lawful officers of this State:*

You are herdby commanded, That of all goods and chattels, lands, tenements and franchises of the Singer Manufacturing Company, a corporation doing business in this State, you cause to be made the sum of two hundred dollars, as its tax for the year, 1887, assessed against it upon its agents, under an Act, approved Dec. 22nd, 1886, and all costs, and that you pay over said sum of money to the Comptroller-General of said State, at his office in Atlanta, Georgia, and return thereto this execution, with your actings and doings entered thereon.

Assessed this, the 22d day of August, 1887.

WM. A. WRIGHT,
Comptroller-General of Georgia.

Levied this *fi. fa.* on four drop Cabinet Singer Sewing Machines, as the property of the Singer Manufacturing Company.

This August 24th, 1887.

A. M. PERKERSON,
D. Sh'ff.

GEORGIA, }
FULTON COUNTY. }

Received of the Defendant, The Singer Manufacturing Co., Two Hundred and Four and 50-100 Dollars in full of principal, interests and costs required by the within *fi. fa.*, the said Defendant, The Singer Manufacturing Company, declaring that this *fi. fa.* and said taxes are illegal, and it is not liable for the same or any part thereof, and said payment is made under protest and compulsion of this writ, levy and seizure as above, and said Defendant further

declaring a purpose to demand and sue for and recover back said taxes, the amount now paid as aforesaid.

August 24th, 1887.

A. M. PERKERSON,
D. Sh'ff.

STATE OF GEORGIA, } COMPTROLLER GENERAL'S OFFICE.
FULTON COUNTY. }

*To All and Singular, the Sheriff's and other Lawful Officers of this State:*

You are hereby commanded, That of all goods and chattels, lands, tenements and franchises of the Singer Manufacturing Company, a corporation doing business in this State, you cause to be made the sum of Nine Hundred and Thirty Dollars, as its tax for the year 1888, on the Company and Agents, under Act approved Dec. 22nd, 1886, and all costs, and that you pay over said sum of money to the Comptroller-General of said State, at his office in Atlanta, Georgia, and return thereto this execution, with your actings and doings entered thereon.

Witness, W. A. Wright, Comptroller-General of said State, under his official hand and the seal of said office.

Assessed, this, the 26th day of Jan'y, 1888.

WM. A. WRIGHT,
Comptroller-General of Georgia.

Levied this *fi. fa.* on Sixty-five Singer Sewing Machines, as the property of the Singer Manufacturing Company, this 26th day of Jan'y, 1888.

A. M. PERKERSON,
D. Sh'ff.

STATE OF GEORGIA, }
FULTON COUNTY. }

Received of the defendant, the Singer Manufacturing Company, Nine Hundred and thirty-four and 50-100

Dollars, in full of principal, interest and costs, required by the within *fi. fa.*

The said Defendant, The Singer Manufacturing Company, declaring that this *fi. fa.* and said tax are illegal, and it not liable for the same, or any part thereof, and said payment is made under protest and under compulsion of this writ, levy and seizure as above, and said Defendant further declaring a purpose to demand, sue for and recover back said taxes, the amount now paid as aforesaid.

A. M. PERKERSON,
D. Sh'ff.

STATE OF GEORGIA, } COMPTROLLER-GENERAL'S OFFICE.
FULTON COUNTY, }

*To All and Singular, the Sheriff's and other Lawful Officers of this State:*

You are hereby commanded, That of all goods and chattels, land, tenements and franchises of the Singer Manufacturing Company, a corporation doing business in this State, you cause to be made the sum of one Hundred and twenty dollars, as its tax for the year 1888, assessed against it on twelve agents, under and by virtue of an Act approved Dec. 22nd, 1886, and all costs, and that you pay over said sum of money to the Comptroller-General of said State, at his office in Atlanta, Georgia, and return thereto this execution, with your actings and doings entered thereon.

Witness, W. A. Wright, Comptroller-General of said State, under his official hand and the seal of said office.

Issued, this, the 25th day of July, 1888.

WM. A. WRIGHT,
Comptroller-General of Georgia.

Levied this *fi. fa.* on twenty Singer Machines as the

property of The Singer Manufacturing Co., this 27th of July, 1888. A. M. PERKERSON,
D. Sh'ff.

STATE OF GEORGIA, }
FULTON COUNTY. }

Received of the defendant, The Singer Manufacturing Company, One Hundred and Twenty-four and 50-100 Dollars, in full of principal, interest and costs, required by the within *fi. fa.*, the said defendant, The Singer Manufacturing Company, declaring that this *fi. fa.* and said tax are illegal, and it not liable for the same, or any part thereof, and said payment is made under protest and under compulsion of this writ, levy and seizure as above; and said defendant further declaring a purpose to demand, sue for and recover back said taxes, the amount now paid as aforesaid, this 27th of July, 1888.

A. M. PERKERSON,
D. Sh'ff.

STATE OF GEORGIA,
COMPTROLLER-GENERAL'S OFFICE,
Tax Department.] ATLANTA, April 3, 1891.

I hereby certify that the above and foregoing contains a true and complete transcript of each of the six writs of *fieri facias* issued from my office in favor of the State of Georgia vs. The Singer Manufacturing Company, of the dates and amounts therein set out respectively, and of the entries of levy and satisfaction entered on each; I further certify that in two instances, when the entry of satisfaction and payment under protest is without date, such payments were made after levy by the Sheriff. Given under my hand and seal of office, this April 3d, 1891.

WM. A. WRIGHT,
Comptroller-General.

FILED
APR 20 1891
JAMES H. McKENNEY

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF GEORGIA,
*State of Georgia, Fulton County.*

Before me in person came John G. Dixon who, on oath, says that he was the special examining bookkeeper and traveling inspector of Georgia Agencies for the Singer Manufacturing Company for the years 1887 and 1888, and had intimate knowledge of the affairs of said company in Georgia and of its accounts and transactions with its agents in said State; that all agents' ten dollar taxes and all two hundred dollar taxes of both said years were exacted by and paid to the Sheriff and Comptroller General under compulsion of writs of execution and levy on the company's property and threats of criminal prosecution, by either or all of these means in every instance; that one of said agents actually was arrested for such non-payment, and all other agents were in danger and in fear of such arrest if payment was not made as aforesaid; and that none of said payments were voluntary, but all under duress and compulsion as aforesaid.

(Signed) JOHN G. DIXON.

Sworn to and subscribed before me this 9th day of April, 1891.

Seal of Court.

(Signed) O. C. FULLER,
*Clerk U. S. Circuit Court*
*for Northern District of Georgia.*

Office Supreme Court U. S.
FEB 14 1890

# Supreme Court of the United States.

**OCTOBER TERM, 1889.**

**No. 361.**

THE SINGER MANUFACTURING COMPANY,
*Appellant,*

*vs.*

WILLIAM A. WRIGHT,
*Comptroller-General of the State of Georgia,*

—AND—

LOVICK P. THOMAS,
*Sheriff of Fulton County, Georgia.*

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

# APPELLANT'S BRIEF.

GEORGE HILLYER,
*Solicitor for Appellant,*
10 Alabama Street,
Atlanta, Ga.

Constitution Job Print, Atlanta, Ga.

# *United States Supreme Court.*

| | |
|---|---|
| THE SINGER MANUFACTURING COMPANY, Appellant, vs. WM. A. WRIGHT, COMPTROLLER-GENERAL, et al. Appellees. | In Equity |

Appeal from the Circuit Court for the Northern District of Georgia.

## STATEMENT.

The General Tax Law, enacted by the Legislature of the State of Georgia, to raise revenue for the fiscal years 1887 and 1888, contains nothing out of the ordinary course, or strange, except in the clause out of which this litigation sprung. See published Vol. Acts of Georgia Legislature of 1886, page 16.

The whole case turns on the proper construction and on the validity of the seventeenth clause or paragraph of said tax act, which clause reads as follows:

"*Seventeenth.*—Upon every sewing machine company selling or dealing in sewing machines, by itself or its agents, in this State, and upon all wholesale dealers in sewing machines selling sewing machines manufactured by companies that have not paid the tax herein required, two hundred dollars for each fiscal year or fractional part thereof, to be paid to the Comptroller-General at the time of commencement of business, and in addition to the above amount, said companies or wholesale dealers shall furnish the Comptroller-General a list of all agents authorized to sell machines, and shall pay to said Comptroller-General the sum of ten dollars for each of their agents, in each county, for each fiscal

year or fractional part thereof, and upon the payment of said sum, the Comptroller-General shall issue to each of said agents a certificate of authority, to transact business in this State; and all sewing machines belonging to such companies, dealers or their agents in possession of such companies, dealers, their agents or others shall be liable to seizure and sale for the payment of such license fees and tax. This tax shall be for the whole State, and such companies, their agents and wholesale dealers, shall not be liable for any county tax or license fees by the counties for selling sewing machines therein; and said agents shall be required to register their names with the Ordinary and exhibit their license from the Comptroller-General at the time of registering, and thereafter keep the same posted on their wagons or vehicles, or at their places of business. When a company or wholesale dealer transfers an agent from one county to another, said company or dealers shall notify the Comptroller-General in advance of said transfer. In cases where wholesale dealers sell sewing machines manufactured by different companies, such dealers shall pay the license fees and tax above provided for separately for each company whose manufacture of machines may be sold by such dealers, unless each of said companies has itself paid such license fees and tax. Any person who shall violate the provisions of this section shall be liable to indictment for misdemeanor, and on conviction shall be fined not more than five hundred dollars and not less than one hundred dollars in the discretion of the court trying the same. If said fine is not paid within the time prescribed by the court, such person so fined shall be imprisoned as prescribed in section 4310 of the Code."

The fact turned out to be that there were no wholesale dealers in sewing machines in the State of Georgia except five sewing machine companies, who sold their own machines at wholesale, and paid the $200 general tax above required. (See printed record, page 23.) That there were two hundred and fifty or more *retail dealers* in sewing machines in the State who were all individuals or partners except appellant—the Singer Manufacturing Company—which is a corporation, and which manufactures its machines at its domicile in New Jersey, and sells them at retail by traveling agents in Georgia and elsewhere. (See

pages 3, 4, 24, 25 and 26 of printed record.) And that very many of the other retail dealers transact their business by traveling agents in the same manner as appellant. (Page 23). When the Comptroller-General came to put said tax act in operation he construed it to mean that the five above named, and complainant must pay the $200 general license tax, because they are "sewing machine companies;" and that appellant must pay $10 additional for each of its forty or more agents, also because it is a "sewing machine company," although a retailer only; but that all other retailers of sewing machines in said State were wholly exempt from both the $200 general tax and the $10 agent's tax, because they are not "companies" but individuals, and that the act does not tax them. (See printed record, page 25, middle). The taxes were demanded, and the defendants were about collecting them by compulsory process, when appellant filed this bill, alleging that said 17th paragraph was violative of the Fourteenth Amendment to the Constitution of the United States; and of the "commerce clause" of the same; and of the "uniformity clause" of the Constitution of the State of Georgia; and praying an injunction. There was no demurrer or other formal objection, but an answer merely denying the allegations of the bill, and setting up that the defendants were seeking to do their duty.

The cause was heard before his Honor, Judge Newman, in the Circuit Court, on the application for injunction, and much proof was adduced as to the methods in which appellant and other sewing machine companies, and retail dealers, did their business. The Court found and decided, as matter of fact, that the allegations contained in the bill—though denied in the answer—were proven to be true. (See printed record, page 30). There were several amendments to the bill and answer, but above contains essence of the same.

The Judge, though finding the facts with complainant, yet held the law against it, and he refused the injunction and dismissed the Bill.

The Singer Manufacturing Company appealed, and we are here to prosecute that appeal.

## ERRORS SPECIFIED.

1

We say the decree is erroneous, because said seventeenth clause of said tax act violates the Fourteenth Amendment to the Constitution of the United States.

*a.*—It taxes complainant (appellant) the $200 general license tax and also the $10 agent's tax; and at the same time, and the State in the enforcement thereof; exempts all other retail dealers of the same class and condition, this being an unauthorized discrimination against appellant; and denying to it the equal protection of the laws; and said tax act is thereby void.

*b.*—Said tax act seeks the enforcement and collection of said taxes by a criminal prosecution—a method not used for the collection of taxes from other persons—and this also an unauthorized discrimination against, and denying to appellant the equal protection of the laws; and said tax act is thereby void.

2

We say the decree is erroneous, because said tax act violates the "commerce clause" of the Constitution of the United States; complainant resides in another state; and the act in question interferes with the free and unrestrained offering for sale and selling by it of its goods and wares in the State of Georgia; and said tax act is thereby void.

3

We say the decree is erroneous; because said tax act is violative of the "uniformity clause" of the Constitution of the State of Georgia; under and by which all taxation is required to be "uniform upon the same class of subjects," and appellant says that this tax is not uniform, because others of the same class are exempt, and it alone of said class (viz: retail dealers of sewing machines) is taxed; and for this cause said tax act is void.

And appellant insists that the court below should have held that said seventeenth section of said tax act was and is void; and said court erred in not holding that the same was void upon each and every of the grounds herein above stated, and erred in not granting the injunction and relief as prayed for in the Bill.

## ARGUMENT.

The act in question under the scheme of taxation apparent therein, with, in the main, a just and fair exercise of power, distributes the burdens of taxation equally and fairly, over the objects thereof, using for the purpose language natural, easily to be understood, and such as is usually found in laws of the kind. This is especially true in the main, of the second section of said act, the same that contains the obnoxious *seventeenth clause*—the one here complained of—in which license taxes are laid on the various callings and persons there enumerated, and it is only when we come to sewing machine dealers and companies that any noticeably singular language is employed. As to every other license except as to sewing machines it is plainly provided that all persons, whether neighbors or strangers, residents or non-residents, whether individuals, firms, companies, corporations—*all who do the business shall pay the license.* There is no favoritism and no discrimination. The amount of the license tax indeed varies, under a fair and reasonble exercise of the Legislative discretion, as between one *class* or *subject of taxation* and another; but all who fall within the *same* class or subject fare equally and alike *until it comes to sewing machines and the sewing machine business.* Now, as to this latter, notice the language: "Upon every Sewing Machine Company selling or dealing in sewing machines, by itself or its agents in this State, and upon all wholesale dealers in sewing machines, selling sewing machines manufactured by companies that have not paid the tax herein required, two hundred dollars for each fiscal year or fractional part thereof * * * * and in addition to the above amount said companies and wholesale dealers shall * * * * pay to said Comptroller General the sum of ten dollars for each of their agents etc." It is impossible to read this clause without being puzzled by the involved and singular language. If it was meant to tax all dealers in sewing machines as a class; or wholesale dealers; or retail dealers; or manufacturers; either or any of these as a class, it would be easy to say so. If we concede that either or all of these would have been a lawful and proper classification, and if the Legislature had in-

tended to tax all persons of a class *uniformly*, as was its duty; each and every other clause of the Bill shows that the framers of the same knew how to express such intention.

But the fact of the situation was that there were large numbers of individuals and firms in the State who were retail dealers in sewing machines, and they were all resident merchants except *one only*, viz: the Singer Manufacturing Company. The latter was able to pay and non-resident, and had few friends. The local merchants were numerous and had votes and many friends, and would be benefitted if the Singer Company were driven out of the business. The law is so framed as to tax the Singer Company two hundred dollars general license and ten dollars license tax for each of its agents; but so as to tax the other hundreds of retail dealers—its rivals in trade—*nothing whatever*. The only difference or classification alluded to in the act or pretended being that one is a "company" and the others are individuals. It is alleged in the Bill (page 3 of printed record that—

"From an examination of said tax act, in the paragraph above quoted, it appears that individuals dealing in sewing machines by wholesale, and corporations or companies dealing in sewing machines, whether at wholesale or retail, are required to pay the State an annual tax of two hundred dollars, and, further, that corporations or companies dealing in sewing machines, either at wholesale or retail, are required to pay also an annual tax of ten dollars each for every agent which they may employ in the State of Georgia in the sewing machine business, while the retail dealers in sewing machines, who are individuals, are by said act exempt from said two hundred dollar tax altogether, and can employ as many agents as they please, and are also by said act exempt from said ten dollar tax for each of said agents."

"Under the operation of this law corporations or companies, including complainant, retail dealers are required to pay a heavy license tax of ten dollars for each of their agents, while individuals who are retail dealers, following the same business, are required to pay no such license tax for agents at all, and that corporations or companies, including complainant, are required to pay to the State the sum of two hundred dollars for the

privilege of doing business in Georgia, whether they are wholesale or retail dealers, while the individuals are only required to pay the tax of two hundred dollars if they are wholesale dealers."

It turned however, as a matter of fact, that there were no wholesale dealers at all in the State except four or five sewing machine companies, and who fell under the ban of this exaction in their capacity of "companies." (See record page 23.)

The bill further alleges (page 24 of printed record) that—

"Under the language and meaning of said seventeenth paragraph of the second section of said tax act, in its practical application as administered by defendant, and according to the true meaning of the same, all the different sewing machines named and described above in this amendment are sold throughout said State of Georgia by said retail dealers in sewing machines free of any license tax whatever, either, the general license tax of two hundred dollars, or said special tax of ten dollars for agents, except that the Wheeler & Wilson, the Domestic, the New Home, the White, the American, and the complainants' machines are sold or handled under the general license tax of two hundred dollars, and out of this number complainant, except, possibly, the New Home, in some small particulars, is the only one who does also a retail business."

* * * * That complainant "is one of a class numbering more than two hundred and fifty retail dealers in sewing machines;" that the language and words of description used in said seventeenth paragraph of the second section of said tax act are such as to single out complainant so that it being "a sewing machine company, is the only one of all retail dealers in said State upon whom either the two hundred dollar general license tax, or ten dollar agent's tax is levied" * * * * so that, (page 25) "out of the whole number of persons who deal in sewing machines at retail, in person or by agents, corporation, partnership, company or individuals, resident or non-resident, complainant, except as aforesaid, is the only and sole party upon whom, under the unequal and unjust terms of said seventeenth paragraph of second section of said tax act, the onerous and grossly oppressive burden of said taxes are made to fall or attempted to be enforced."

The bill further alleges that this interpretation, here placed on said seventeenth paragraph * * * * does not materially differ from that placed upon it by the defendant (page 25), and that they intend exacting the illegal tax accordingly, "unless restrained."

His Honor, Judge Newman, in the written opinion filed with the decision from which we have appealed (differing with complainant only in the law), finds all the facts to be substantially as complainant alleges them. He says (page 30, at bottom):

"Complainant further says that the Comptroller-General does not intend to enforce this act against individuals and firms engaged in selling sewing machines on their own account, but that he does intend to enforce it against it, and is already proceeding to do so.

"It employs about forty agents, for each of whom the Comptroller-General demands ten dollars under this act. The answer denies generally the allegations in the bill, but the proof submitted shows them to be substantially true."

## The Fourteenth Amendment.

1. The law in question violates the 14th Amendment to the Constitution of the United States because it denies to complainant (the appellant) "the equal protection of the laws."

Santa Clara County *vs.* R. R. Co. 13th Am. & Eng. R. R. Cases, 182.

San Mateo Co. *vs.* R. R. Co., 8th Am. & Eng. R. R. Cases. 1.

§§ A license tax must be * * * "so laid that none who followed that occupation escaped it. Let it reach all of a class, either of persons or things. * * * But when for any reason it becomes discriminative between individuals of the class taxed, and selects some for an exceptional burden, the tax is deprived of the necessary element of legal equality, and becomes inadmissable. It is immaterial on what ground the selection is

made, * * * for if the principle of selection be once admitted, limits cannot be set to it, and it may be made use of for the purposes of oppression, or even of punishment."

Cooley on Taxations, pages 170-171 and notes.

§§ The phrase "equal protection of the laws," embraces all the rights of the citizen.

The Slaughter House Cases, 16th Wall, 57-100.
Missouri *vs.* Lewis, 101 U. S. 22.
Barbour *vs.* Connally, 113 U. S. 27-31.
Kentucky R. R. Tax Cases, 115 U. S. 322.

"Municipal restrictions imposed upon one class of persons engaged in a particular business, which are not imposed on others engaged in the same business and under like conditions, impair the equal rights which all can claim in the enforcement of the laws."

Soon Hing *vs.* Crowley, 113 U. S. 703.

The Court below did not think Santa Clara *vs.* Southern Pacific Railroad Company to be in point, and refers to it as a decision made at the Circuit. We rely on it and here quote from it (13th Am. & Eng. R. R. Cases, p. 195), as follows:

"And the purpose of this long and anxious consideration was that protection against injustice and oppression should be made forever secure. 'Secure, not according to the passion of Vermont, or of Rhode Island, or of California—depending upon their local tribunals for its efficient exercise—but secure, as the right of a Roman was secure, in every province and in every place; and secure by the judicial power, the legislative power, and the executive power of the whole body of the States—of the whole body of the people.' With the adoption of the amendment the power of the States to oppress any one, under any pretense or in any form, was forever ended; and henceforth all persons within their jurisdiction could claim equal protection under the laws. And by equal protection is meant equal security to every one in his private rights—in his right to life, to liberty, to property, and to the pursuit of happiness. It implies not only that the means which the laws afford for such security shall be equally accessible to him, but that no one shall be subject to any greater burdens or charges than such as are imposed upon all others

under like circumstances. This protection attends every one every where, whatever be his position in society or his association with others, either for profit, improvement or pleasure. It does not leave him because of any social or official position which he may hold, nor because he may belong to a political body or to a religious society, or be a member of a commercial, manufacturing or transportation company. It is the shield which the arm of our blessed Government holds at all times over every one—man, woman and child—in all its broad domain, wherever they may go and in whatever relations they may be placed. No State—such is the sovereign command of the whole people of the United States—no State shall touch the life, the liberty or the property of any person, however humble his lot or exalted his station, without due process of law; and no State, even with due process of law, shall deny to any one within its jurisdiction the equal protection of the laws."

§ § "The inhibition of the amendment, that no State shall deprive any person within its jurisdiction, of the equal protection of the laws, was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation."

Pembina Mining Company *vs.* Pennsylvania, 125 U. S. 188-189.

§ § In the case at bar it is not even a number of persons upon whom the unjust burden is laid. The complainant is singled out and virtually the *sole and only sufferer*. The actual case, as this law is construed and enforced by those having in charge its enforcement, is just as if the law had read: "The Singer Manufacturing Company shall pay a general license tax of two hundred dollars and a license tax of ten dollars for each of its agents, but all other retail dealers in sewing machines shall be exempt from license tax of any kind." This is precisely the kind of discrimination that Judge Cooley doubtless means when he speaks of its being *used for purposes of oppression*. Such instances of oppression are fortunately rare in legislative history, and we venture to say that the courts of the country have never yet upheld one as bad as this!

"The Fourteenth Amendment to the Constitution of the United

States * * * undoubtedly intended * * * that no greater burdens should be laid upon one than are laid upon others in the same calling and condition."

Yick Wo. *vs.* Hopkins, 118 U. S., 357 (at bottom).

A law violates the Constitution of the United States if it makes "arbitrary and unjust" discriminations.

*Ib.*, p. 356, 3d head note.

We quote from Yick Wo. *vs.* Hopkins 118 U. S. 373 as follows:

"In the present cases we are not obliged to reason from the probable to the actual, and pass upon the validity of the ordinances complained of as tried merely by the opportunities which their terms afford, of unequal and unjust discrimination in their administration. For the cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion that whatever may have been the intent of the ordinance as adopted they are applied by the public authorities charged with their administration and thus representing the State itself with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws, which is secured to the petitioners as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States. Though the law itself be fair on its face and impartial in appearance, yet if it is applied and administered by public authority with an evil eye and an unequal hand so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned by this court in Henderson *vs.* Mayor of New York, 92 U. S. 259; Chy Lung *vs.* Freeman, 92 U. S. 275; *ex parte* Virginia, 100 U. S. 339; Neal *vs.* Delaware, 103 U. S. 370 and Soon Hing *vs.* Crowley, 713 U. S. 703."

§ § It is alleged in an amendment to the bill (see page 8 of printed record) that the taxes and exactions here complained of are by provision contained in the Act to be enforced by a criminal

prosecution, and that such is not the case with regard to any other tax imposed by law in the State, and that this is violatiue of the rules of equal protection and uniformity required by the Fourteenth Amendment, and of section 1977 of the Revised Statutes of the United States, and is therefore void.

Enforcement of the collection of tax in such case by a criminal prosecution is illegal and void.

Teideman on Police Power. Page 286.

*a*—The Fourteenth Amendment applies to corporations, Santa Clara County vs. Southern Pacific Railroad Company, 118, U. S., 396. Pembina Mining Company vs. Pennsylvania, 125, U. S. 181, 3rd hd note. Railway Company *vs.* Beckwith, 129, U. S., 26.

*b*—There is in complainant's case no question as to any duty of complainant, a foreign corporation to pay this license *as a condition precedent to entering the State*, as in Philadelphia Fire Association *vs.* New York, 119, U. S. 110, and other like cases. Complainant entered the State of Georgia and had been there owning and paying tax on thousands of dollars worth of property, and doing an immense business for fifteen years or more, under consent and sanction of the State, before this controversy arose. (See page 26 of printed Record.)

If a foreign corporation is permitted to do business in the State, it is "entitled to protection," just the same as is a domestic corporation.

San Francisco vs. Liverpool London and Globe, 74, Cal., 113. S. C. 5th Am. St. R., 425.
Erie R. R. Co. vs. The State, 31 N. J. L., 531,
And see 13th Fed. Reporter, 788 and citations.

It is contrary to legal principle to hold that a State may recognize the "existence of a foreign corporation for the purpose of taxation and at the same time deny such legal existence for

the purpose of depriving it of those rights which belong to other individuals or companies."

Morewitz, sec. 973. Railway Co. vs. The State, 31, N. J. L., 531.

The individuals composing a foreign corporation are entitled to the "equal protection of the laws," whether the corporation itself has a technical existence in the State or not, and they would never be left as a prey to the "spoil of the first taker." If not a corporation they would still be partners or joint proprietors.

Morewitz, sec. 972.

§§ "In all cases in which this Court has considered the subject of the granting by a State to a foreign corporation of its consent to the transaction of business in the State, it has uniformly asserted that no conditions can be imposed by the State which are repugnant to the Constitution and laws of the United States."

Barron vs. Burnside, 121, U. S., 200.

See also, LaFayette Ins. Co. vs. French, 18 How., 404, 407; Ducat vs. Chicago, 10 Wall, 410, 415; Ins. Co. vs. Morse, 20 Wall, 445, 456; St. Clair vs. Cox, 106 U. S., 350, 356; Phila. Fire Assn. vs. New York, 119, U. S. 110, 120.

## COMMERCE CLAUSE.

2. We insist with confidence that the law in question violates the commerce clause of the Constitution of the United States.

The case at bar is in principle exactly like Asher vs. Texas, 128 U. S., page 129. There one Schultze, a citizen of Louisiana, was engaged in selling through his agent, Asher, in Texas, certain articles manufactured by the former in Louisiana. The State of Texas undertook to exact a license tax (quite moderate and reasonable as compared with the one of which we here complain). It was resisted, and this Court said, on a writ of

error, that "a State law exacting a license tax to enable a person within the State to solicit orders and make sales there for a person residing in another State, is repugnant to that clause of the Constitution of the United States which gives Congress the power to regulate commerce among the several States, and is void." In the case at bar the complainant makes the articles in New Jersey and sells them by its agents in Georgia, and the latter State exacts a license tax. It is resisted. Where is the difference?—*Stare decisis.*

As to this branch of the question it would make no difference, if it were true, that the same exactions were imposed on domestic or resident sewing machine companies in case there are any in the State, (which there are not.) Said this Court in Robbins vs. Shelby county, 120, U. S., 489, (likewise a case of a drummer,) "inter-State commerce cannot be taxed at all by a State, even though the same amount of tax should be laid on domestic commerce, or that which is carried on solely within the State." This last case is carefully considered and expressly affirmed in Asher vs. Texas, Supra, and the two cases said by this Court to be just alike.

We cite also in this connection, Leloup vs. Port of Mobile, 127 U. S., 640; and see also the many citations contained in the opinion of the Court, especially at page 648, in this, and in the Robbins case, supra.

§§ It is proper to remark, that two of these cases, viz: 127 U. S., 640 and 128 U. S., 129, were decided since the date of the decision here appealed from; and the volume containing the other—the Robbins case—had not then been published.

§§ But it is not true that in the present case the same exaction is imposed on domestic commerce as that complained of by the non-resident party, and as was true in both the Robbins and Asher cases. It is alleged in the sworn bill (page 33 printed record), and nowhere denied; but like all other facts of appllant's case virtually conceded that—

"There is no individual or firm in the State of Georgia engaged in the selling of sewing machines at wholesale, and were not at the time of the passage of said tax act. There are five sewing machine companies engaged in the wholesale trade, to-

wit: "The New Home," "The Wheeler and Wilson," "The Domestic," "The White," and "The American." These all pay the $200 State tax, and their machines are supplied at wholesale to retail dealers, who furnish consumers. These retail dealers number from two hundred and fifty to three hundred in the State. They employ sewing machine agents and canvassers, some of them as many as twenty or more. Such agents and canvassers travel over the different counties in this State and solicit trade, and in that way, by such convassing and soliciting, sell the machines of such retail dealers. *This is exactly the business done by complainant, and is exactly the manner in which it is done.* The business of some of such retail dealers, other than complainant, is large, not only in respect to the number of agents employed, but quantity of machines sold, as instance Barton McClesky & Co., of Augusta, whose sales probably approximate twenty to twenty-five machines per day in the aggregate of the different counties where they operate." And we may here add that this is exactly the business and exactly the way it was carried on in both the Robbins and the Asher cases; only the articles sold were different, which is, of course, immaterial.

So, it will be perceived that the present is a much stronger case than either 120th U. S., 489 (the Robbins case) or 128th U. S., page 129, (the Asher case) because in both of those the inhibited exaction was attempted to be imposed on the resident as well as the non-resident vender.

In the present case the illegal exaction is laid on the non-resident retail dealer only, whilst the resident dealer of the same class *is wholly exempt.*

Complainant owns property in the State, which is taxed and the tax paid on its value as property just like the property of other persons. In these respects it has borne for years and still bears its full share of the public burden of taxation equally and fairly, the same as other persons. (See printed second pages 4 and 26.) Touching this property, tax, it makes no complaint, and there is no dispute about it. The present controversy arose over a business or license tax just as was the case in 120th U. S., 489, and 128th U. S., 129.

§§ Judge Newman, in the written opinion, takes the ground

(see page 34, of record) that the Legislature intended to place manufacturers and wholesale dealers in a class and tax all alike, and he asks, "Why may not this be done?" The reply is, 1st. There are no wholesale dealers, and 2nd. The Robbins and Asher cases decide that it cannot be done. Under the principle of those decisions the manufacturer of shoes made in Massachusetts, or of shirtings made in Rhode Island, may sell their wares in Georgia free of license or tax; and may send agents all over the State seeking purchasers, *free of license tax*, even though the State had or does exact the same license tax for the selling of shoes or shirtings made in her own borders. And just so, appellant can make or have sewing machines in New Jersey and sell them in Georgia free of tax, whether Georgia taxes a similar manufacturer in her own borders or not.

§ § In support of his ruling on this point Judge Newman cites two cases, (page 34 of record) decided by the Supreme Court of Georgia:

Curtis vs. The Mayor, 60th Ga., 597 and
Davis vs. Macon 64 Ga., 128.

Even if applicable those cases would not be controlling. This Court would and will follow its own rulings as above cited rather than those of a State Court in construing the Constitution of the United States. But these Georgia cases related to controversies touching the State Constitution, and in no way involved the commerce clause of the Constitution of the United States. They are not in point, as shown below, even as regards the "uniformity clause" of the State Constitution, but they are certainly wide of the mark as regards the Fourteenth Amendment to the Constitution of the United States. As also wide of the mark when we are considering the "commerce clause" of the Constitution of the United States."

## The Uniformity Clause of the State Constitution.

3. But we say further, and with equal confidence, that the law in question violates the rule of uniformity required by the State Constitution.

§§ The State Constitution provides in Art. I, Par. 2, Code of Ga. 4994, "That protection to person and property is the paramount duty of government, and shall be impartial and complete;" and in Art VII, Sec. 2. Par. 1, Code 5181, "All taxation shall be uniform upon the same class of subjects, and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax; and shall be levied and collected under general laws." And again in Art. I., Sec. 4., Par. 1., Code 5027, "Laws of a general nature shall have uniform operation throughout the State."

Do these broad and liberal and wise provisions mean anything? Or can they be frittered away and evaded so as to levy an onerous and destructive tax (see printed record page 26 at bottom) on one retail dealer, and totally exempt all others? And do this by mere legerdemain and trick of speech, in which, though the wound and death may be or is very apparent, yet the weapon wrapped up and concealed so that the courts will not see it and protect the victim by taking it away?

§§. Let it be carefully observed that the Constitution of 1868 of the State of Georgia differs essentially in the particulars here in question from that of 1877, under which the present controversy arose. The only provision in the Constitution of 1868 on the subject reads as follows: "And taxation on property shall be *ad valorem only* and uniform on all species of property taxed."

Code of 1873, Sec. 5019.

This contained nothing as to uniformity of tax on the *same class of subjects*.

It was whilst the constitutional law of Georgia stood in that form that the earlier cases decided in that State arose, such as

Burch *vs.* The Mayor, 42 Ga., 596.
Bohlee *vs.* Schneider, 49 Ga., 195
Ins. Co. *vs.* Augusta, 50 Ga., 530.
The Mayor *vs.* McWilliams, 52 Ga., 250.
Goodwin *vs.* The Mayor, 53 Ga., 410.
The Mayor *vs.* The Macon P. C. Bank, 60th Ga., 133.

It was just because the Constitution of 1868 was defective in this respect that the Constitution of 1877 goes further and makes the wise and just rule of "uniformity" apply not only to "property

taxed," but to embrace all "subjects" of taxation, including, of course, business or occupation taxes.

§ § An examination of the cases cited in Judge Newman's opinion and above noted from 42nd Ga. to 60th Ga. inclusive, will show that though they contain many dicta which support appellant here, yet strictly they are none of them in point any way; but even if they were, their force is taken away by the fact that they arose not under the present, but under the old Constitution of the State. It is remarkable that the learned Judge should have overlooked this distinction, but such seems to be the case.

The decisions of the Georgia Supreme Court on the construction of the Constitution of 1868, under which these cases arose, are, however, in a quite state of confusion. Says Judge Bleckley in Gould *vs.* Atlanta, 55 Ga., 685, how to reconcile them "is more than I know at present."

In this case of Gould *vs.* The Mayor of Atlanta, 55 Ga., 678, there was, as in the present instance, a very "pungent piece of legislation," as Judge Bleckley calls it. True it arose under the Constitution of 1868. But the court held that whether the exaction be regarded as a tax on property or on business it was an unjust "discrimination," whether made on resident or non-resident, either or both. (*Ib.* page 682.) And the court under a strong, well written and elaborate opinion, delivered by now Chief Justice Bleckley, condemned the Tax Ordinance in question, and rescued the oppressed tax payer "from its jaws."

§§ The only case cited by Judge Newman, as decided by the Supreme Court of Georgia, and ruling on the construction of the *present* Constitution of that State is Davis vs. Macon, 64 Ga., 128. That case, we make bold to say, is really an authority in favor of appellant. It decides that the business of a farmer is different from that of a merchant, even though the merchant deal in or sells farm products, and that a sale by a farmer is "merely occasional and incidental," to his business of farming. The decision would, in that case, have been different, if the tax had been laid on such retailers of farm products (whether produced by the sellers themselves or not,) as were *companies* or *corporations*, but that individuals in the same business should be wholely exempt from any tax, and especially if it

had turned out that there was *just one* such corporation or company in the retail trade at whom the onerous and oppressive exaction was aimed, and that it *actually fell on one only*, whilst all the others were intended to go, and did go, free of such tax! Says Judge Bleckley, in that case: "In adjusting a business tax those who are engaged in the same business are to be taxed alike." 64 Ga., 133.

There is one other Georgia case and the only other that has, so far as we are aware, arisen under the uniformity clause as to "subjects" or "classes," of the State Constitution of 1877. There the controversy arose by reason of alleged discrimination between two classes; and not as here between persons of the same class. And the court held of course that the law might tax one class of occupations and not another and different occupation. Appellant has never denied that proposition. The brief but able opinion of the late Chief Justice Warner, however, in that case closes with these words: "But if the class of Gardeners, or the class of any other occupation be taxed, the tax on that class of occupations must be the same, *in order to secure uniformity* as contemplated by the Constitution of 1877."

(Italics ours) Cutliff *vs.* The Mayor, 60th Ga., 597.

Appellants position cannot be better stated than is thus expressed by Judge Warner.

So far as the decisions of the Supreme Court of Georgia are in point they sustain the case of Apellant.

§ § Turning now from Georgia to other States and to the Federal Courts for precedent and authority, we say that this propoposition is well sustained, viz:

"A municipality or State may impose a license tax on all persons exercising a certain calling or business, but not upon *a part* of them. There must be uniformity in this respect throughout the municipality or State, both as to the person, whether natural or corporate, and as to the business or calling."

Pullman Car Co. *vs.* Texas, 64 Texas, 274 and S. C. 29 Am. & Eng. R. R. Cases, 194.
118 U. S., 396, Supra.
125 U. S., 181, Supra.
129 U. S., 26, Supra.

Santa Clara Co. *vs.* R. R. Co., 13 Am. & Eng. R. R. Cases, 189.
Cooley on Taxation, pp. 169-179 and notes.
*Ib.*, p. 200.
Marsh *vs.* Supervisors, 42 Wis., 502.
Barbier *vs.* Connolly, 113 U. S., 30-31.
Soon Hing *vs.* Crowley, 113 U. S., 703.
Cummings *vs.* National Bank, 101 U. S., 158.
Wiggins *vs.* Chicago, 68 Ill., 372.
Wiley *vs.* Parmer, 14 Ala., 627.
Oliver *vs.* Washington Mills, 11 Allen, 268.

§§ Nearly all the States have in their fundamental laws provisions requiring uniformity in the subject of taxation—especially in occupation taxes. Notably, the provision on this subject in the Constitution of the State of Texas is very much like that of the State of Georgia in this respect. In a late case the Supreme Court of that State said: "An occupation tax which is not equal and uniform, but which exempts one class of persons persuing an occupation, and imposes a tax on others persuing the same occupation is unconstitutional, void, and can be enforced against neither class of persons."

Pullman Palace Car Co., *vs* State of Texas, 64 Texas, 274 S. C., 29th Am. and Eng. R. R. Cases, 194.

We quote further from the same case as follows:

"Does the business done by persons or corporations owning such cars and running them on the roads of others, or the business done by persons not owning, but running such cars on the roads of others, and business done by railway companies on their own roads with such cars, embrace the same class of subjects of taxation?"

The subject of taxation is the thing or business done; the occupation followed for and on account of which tax is imposed on persons and corporations that pursue it.

The business or occupation of the owners of such cars running them on the roads of others, and of those who are not owners, but run such cars on the roads of others, in so far as the particular occupation for which the tax is imposed is concerned, in no essential differs from that pursued by a railway company that

runs its owns cars of the same kind for the same purpose over its own road. The same acts and facts make the occupation in either case, and it looks to the same end and purpose.

The business or occupation of the one is conducted by the same means as the other; leads to the same results to the persons conducting it, and to the persons accommodated by it.

The business or occupation taxed under the act in question is certainly nothing more than the running of cars of a certain kind on railways for the purpose for which such cars are ordinarily used. This is the business or occupation of a railway company, in so far as it runs its owns cars of the same kind on its own road for the same purposes, making a charge for the use of such cars other than is made for the ordinary transportation of passengers, on account of the increased comfort and convenience to passengers afforded by the use of such cars. A business or occupation separate and apart from its ordinary business of transporting passengers, and on this ground only can be defended the demand or receipt of any sum whatever in excess of the rate fixed by law for the transportation of passengers.—64 Texas, 274.

§§ The Constitutions of most of the States, as before remarked, provide for uniformity and equality in the imposition of the burdens of taxation. Where such constitutional limitations exist, statutes which do not apportion taxes equally are void. Taxes are equal and uniform when no person or class of persons in the territory taxed is taxed at a higher rate than are other persons in the same district upon the same value or thing, and when the objects of taxation are the same, by whomsoever owned or whatever they be.

Norris *vs.* City of Waco, 57 Texas, 635.
City of Lexington *vs.* McQuillan Heirs, 9 Dana, 513.
35 Am., Dec., 149.

In Livingston *vs.* City of Paducah, 8 Ky., 656, a statute imposing a tax of three dollars on every vehicle kept in a city was held to be invalid, as imposing a tax grossly unequal and disproportionate to the taxes on other property. A city ordinance imposing a tax of fifteen cents on every thousand pounds

of tobacco sold in the town, without regard to the value of the tobacco, is void, as imposing an unequal tax.

Town of Danville *vs.* Shelyon, 76 Va., 325.

A statute which imposes a tax on the gross receipts of some railroad companies, and upon the capital stock of others, is void for inequality.

Worth *vs.* Wilmington & W. R. R. Co., 89 N. C., 291. 45 Am. Rep., 679.

§ § In the court below the case cited and principally relied on in argument by the Attorney-General was the State Railroad Tax Cases, 92 U. S., 575. That authority does rule that the legislature may discriminate between one class and another class, which we have never denied. But we say the case is also a strong authority for appellant, because in the 5th head note the court makes with emphasis (the very distinction claimed here for appellant) by italicising the expression, "*uniform as to the class upon it operates.*"

See *Ib.*, page 576.

And the proviso or postulate thus expressed is elaborated and well sustained in the opinion.

*Ib.*, page 611 at bottom and 612 at top.

§§ On other cases cited in the Court below by the Attorney-General, we comment as follows:

Several of them are also good authority for appellant and do not help the appellees at all, as against unjust "discriminations by a State." Missouri *vs.* Lewis, 101 U. S., 22, 1st head note; "Unfriendly discrimination." Adams *vs.* Nashville, 95 U. S., 19, 1st head note; "This constituted a discrimination." Boyer, *vs.* Boyer, 113 U. S., 690; The rate must be "the same and not greater." People *vs.* Commissions, 4th Wallace, 244.

What comfort the Attorney-General can take in these cases we fail to perceive.

§§ The State legislature was "unrestricted by constitutional prohibition" against making exemptions in Tomlinson *vs.* Branch 15th Wallace, 460; nor in that case was there any question of occupation tax at all. The exemption was "partial only" and was merely to prevent a "double taxation" in Hepburn *vs.* School

Directors, 23 Wallace, 485. Read the case, and it is plain that if the exemption there, had been real and actual, as here, the ruling would have been different. There was no question of "uniformity" at all raised in Kelly *vs.* Pittsburg 104 U. S., 78. That case turned on a question of "due process of law" and "public purposes," and we submit is wholly foreign to the present purpose.

## CONCLUSION.

The law assailed by this Bill is void, and its enforcement should be enjoined, because—

1st. It violates the 14th Amendment to the Constitution of the United States.

2nd. It violates the "commerce clause" of the Constitution of the United States.

3rd. It violates the "uniformity clause" of the Constitution of the State of Georgia.

And so we ask that the judgment of the Court below be reversed, with directions that a decree be entered for the complainant.

Respectfully submitted,

GEORGE HILLYER,
Solicitor for Appellant.

Office Supreme Court U. S.
FILED,
APR 8 1891
JAMES H. MCKENNEY,

UNITED STATES SUPREME COURT.

THE SINGER MANUFACTURING COMPANY,
Appellant,
vs. In Equity
WM. A. WRIGHT, COMPTROLLER-GENERAL OF GA. et al.
Appellees.

SUPPLEMENTAL BRIEF OF MR. HILLYER FOR APPELLANT.

Since our former brief was prepared, the Supreme Court of Georgia have had before it the uniformity clause of the State Constitution in two cases, viz: Verdery vs. the Village of Summerville, 82nd Georgia Reports, page 138, and The City of Savannah vs. Weed; the latter not yet appearing in the regular State Reports, but will be found in the weekly number for May 6th, 1890, of the Southeastern Reporter, page 235.

We have already pointed out the distinction between the language of the Georgia Constitution of 1868, and that of 1877, and we contended that the older cases occurring in Georgia, cited and relied on by His Honor, Judge Newman, in reaching a conclusion in this case, were not applicable, since they arose, not under the present, but under a former Constitution.

The distinction thus insisted on by us, is well sustained in the opinion delivered by Chief Justice Bleckley in the first named of said cases. He says: (See 82nd Georgia Reports, page 139; *et seq*:)

* * * * "Possibly, under the Constitution of 1868, taxable "property could be classified by species, and each species taxed "at a different rate from that imposed on another species. There "are, if not direct decisions, some intimations to that effect. "Waring vs. Savannah, 60 Ga., 93, and the cases there cited.

"But that Constitution was altogether different from its succes-
"sor of 1877 in the clause which prescribes the rule of taxation.
"Let the two clauses be compared. The former reads thus:
"'Taxation on property shall be *ad valorem* only, and uniform
"on all species of property taxed."

"This language could, by straining it, perhaps be construed
"to require uniformity, not between species and species, but
"only amongst the various individual pieces or groups of prop-
"erty belonging to one and the same species. The clause now
"of force is in these words: 'All taxation shall be uniform
"upon the same class of subjects, and *ad valorem* on all property
"subject to be taxed within the territorial limits of the authority
"levying the tax, and shall be levied and collected under gen-
"eral laws." * * * *

In the other case of The City of Savannah vs. Weed, page 235, Judge Simmons, delivering the opinion of the Court, says:

* * * * "We think that this (the first) clause refers to
"subjects of taxation other than property, and means that if
"one kind of business, privilege, franchise, or right, etc., is
"taxed, the tax shall be uniform upon all of that class. For
"instance, if liquor dealers are taxed, the tax as to all liquor
"dealers shall be uniform; if draymen are taxed for carrying
"on their business, the tax shall be uniform as to all of that
"class; or if butchers, lawyers, physicians, dentists and pho-
"tographers are taxed, the tax need not be the same upon all of
"these, but shall be uniform as to each one of these classes.
"The Legislature or municipal authorities are not bound to tax
"any occupation or business within their territorial limits, but
"when they undertake to tax one class of business or occupa-
"tion the same tax must be levied on all members of that class.
"We think the plain meaning of this clause of the Constitution
"is that the Legislature or municipal authorities may classify all
"subjects of taxation, and make the tax uniform on each class.
"They can tax these classes or not, as they see proper. They
"can tax one class and exempt the others; but when they do
"tax a particular class, the rate must be uniform as to all of
"that class." * * * *

Both the above named cases are well considered, and will repay perusal.

There is also a recent case, decided by the Supreme Court of Georgia on the commerce clause of the Federal Constitution, to which we would call attention. It is Wrought Iron Range Co. vs. Johnson, likewise reported in the weekly number of May 6th, 1890, of the Southeastern Reporter, and found on page 233. The 2nd head note is as follows: * * * * * "One "whose vocation is to go from place to place with a sample stove "carried upon a wagon, exhibit the sample, and procure orders, "which his employer afterwards fills by delivering, through "other agents, the stoves so ordered, is a peddler, within the "meaning of the Code of Georgia. But, though a peddler, if "he is a citizen and resident of Virginia, and the orders he so- "licits and procures are for stoves belonging to a Missouri cor- "poration, which the latter holds in Missouri, and keeps there "until they are thus ordered, he is protected by the Constitution "of the United States, as lately construed by the Supreme "Court, against the provisions of the Code requiring a license to "peddle, and declaring a forfeiture for not procuring such license."

In the body of the opinion as delivered by Chief Justice Bleckley, elaborating and sustaining the above named head note, some stress is laid on the fact, that Lee, the agent, was himself a citizen of Virginia, and merely sold by sample. But in Brown vs. Maryland, 12 Wheaton, 419, the opinion of this Court, delivered by Chief Justice Marshall, holds that it does not make any difference whether the importer sells by sample or by actual delivery in the State at the time of sale. The Georgia Court in the Johnson case, took a more rational view, we submit, of the controlling authority of the Federal Constitution, and its interprelation by the Supreme Court of the United States, than did the Texas Court in the Asher case. If Lee (the agent in the Georgia case) had sold by actual delivery, and the case had been put upon Brown vs. Maryland, and the line of Federal decisions following it, I have no doubt the Supreme Court of Georgia would have ruled that such sale was protected by the Commerce clause. Brown vs. Maryland has been so often followed, and

is so fully elaborated in Mr. Lowery's brief, that I make no further use of it here, than the above comparison with Wrought Iron Range Co. vs. Johnson.

I remark further that in considering any decision of a State Court, where the controversy arose under its own Constitution, relative to uniformity of taxation, by cities and towns; the principle is widely different from cases involving similar questions which arose under the Federal Constitution. For instance, the State Legislature has taxing power over all the people of the State, whether they live in the city or not. Therefore a State Legislature may, in its discretion, require persons who live outside of the city, to pay taxes in city, if they do business in the city, as was the case in Davis vs. The Mayor of Macon, 64th Ga., 128.

But when we come to the Federal Constitution, it is Congress and not the State which has the legislative discretion. The right of a citizen of another State to sell his wares in Georgia is the very thing, which by the Federal Constitution, Congress alone can regulate. It took a statute—that is an act of Congress—to authorize State Legislatures to regulate traffic in original packages of spirituous liquors, and so we say the State Legislature cannot restrain the traffic by a manufacturer in his productions in another State unless authorized to do so by some act of Congress.

Where production is the business and selling is merely incident thereto, and the incident only is within the territorial jurisdiction of the authority levying the tax, then the law levying the tax is void. Gunn vs. The Mayor of Macon, 10th Southeastern Reporter, page 972. And yet it is only because the incident, viz., the sale, takes place in Georgia that the Court below considered that the New Jersey manufacturer could be taxed in Georgia.

Respectfully submitted.

Jan. 12, 1891. GEORGE HILLYER

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

Clerk's Supreme Court U. S.
FILED.
NOV 11 1890
JAMES H. McKENNEY,
CLERK.

No. 69.

SINGER MANUFACTURING COMPANY,

*Appellant,*

*vs.*

WILLIAM A. WRIGHT, COMPTROLLER GENERAL OF THE STATE OF GEORGIA, AND ANOTHER.

# SUPPLEMENTARY BRIEF ON BEHALF OF APPELLANT.

GROSVENOR LOWREY,
JOSEPH S. AUERBACH,
*Of Counsel.*

C. G. Burgoyne, 146-150 Centre Street, N. Y.

# Supreme Court of the United States.

OCTOBER TERM, 1890.

SINGER MANUFACTURING COMPANY,
Appellant,

AGAINST

WILLIAM A. WRIGHT, Comptroller-General of the State of Georgia, and LOVICK P. THOMAS, Sheriff of Fulton County, Georgia.

No. 69.

## Supplementary Brief on Behalf of Appellant.

This brief is supplementary to that of Mr. Hillyer, for the appellant; and is submitted for the single purpose of discussing the rights of the appellant, a corporation of New Jersey, under the so-called Commerce clause of the Federal Constitution (Sub. 3, Sec. 8, Art. I.), to freely export and sell in other States of the Federal Union sewing machines made by it in New Jersey; and conversely, the right of the State of Georgia to impose, in respect of such business, the conditions expressed in that part of the Georgia Tax Act set forth on page 2 of the printed transcript of record.

By that act, "every *sewing machine company* selling or dealing in sewing machines, by itself or its agents," and every *wholesale dealer* selling machines manufactured by companies that have not paid the tax, must pay "two hundred dollars for each fiscal year or fractional part thereof * * * *at the time of commencement of business;*" and also "the sum of ten dollars for each of their agents in each county for each fiscal year," &c., under penalty for nonpayment that "all sewing machines belonging to such companies * * * shall be liable to seizure and sale for the payment of such license fees and tax," and that "any person who shall violate the provisions of this section" is liable to indictment for misdemeanor, and to punishment by fine or imprisonment.

It is manifest that the words of the statute are naturally construable so as to apply to those companies and those only, who, by reason of being within State protection and not exempted by any exception contained in the Federal Constitution, are confessedly proper subjects of State taxation.

But the Comptroller of Georgia reads the statute otherwise, and has construed it as applying to nonresident companies whose only connection with Georgia is that they send their foreign made goods into that State for sale (p. 30 of Trans. of Rec., near the foot); and he has directed the Sheriff to collect the tax.

It is thus officially claimed that the importation of machines into the State of Georgia by the appellant, with the intention of selling the same, subjects it to an immediate obligation to the State for a sum of money, and to a seizure of its goods for the satisfaction of that claim—whether sales are made or not.

Against this action the appellant invokes the protection of the Federal Constitution, and points out, as the clauses upon which—in addition to the Constitution of the State of Georgia—it relies for guarantees against

ruled (see head note) that, "the provision of the Constitution of 1877, that all taxation shall be uniform upon the same class of subjects * * * * does not prevent the imposition by a Municipal Corporation, of a tax on one class of business and not on another." The implication would seem to be that even an intentional omission to tax one class does not render a tax on another class obnoxious to the uniformity clause of the State Constitution.

Mr. Cooley, in his "Constitutional Limitations, top p. 638, and *marginal* p. 515, (5th edition,) says:

"The constitutional requirement of equality and uniformity only extends to such objects as the Legislature shall determine to be properly subject to the burden. The power to determine the persons, and the objects to be taxed, is trusted exclusively to the legislative department; but over all those objects the burden must be spread, or it will be unequal and unlawful as to such as are selected to make the payment." He cites Butler's appeal, 73 Penn. St., 448, and Sioux City vs. School District, 55 Iowa, as holding that "classes of property as well as classes of *persons* (*Italics* mine) may be exempted." (See Note 4, top p. 638.) He also cites the Supreme Court of Wisconsin as holding, in Weeks vs. Milwaukee, 10 Wis., 242, that "omissions of this character, from mistakes of fact, erroneous computations, or errors of judgment on the part of those to whom the execution of the taxing law is entrusted, do not necessarily vitiate the whole tax. * * * The execution of these laws is necessarily entrusted to men, and men are fallible, liable to frequent mistakes of fact and errors of judgment. If such errors, on the part of those who are attempting, in good faith, to perform their duties, should vitiate the whole tax, no tax could ever be collected. And, therefore, though they sometimes increase improperly the burdens of those paying taxes, that part of the rule which holds the tax, not thereby avoided, is absolutely essential to a continuance of government." (See top p. 639.) That Court held, in the same case, that if the omission is *intentional*, the whole tax is thereby vitiated. On the other hand, Mr. Cooley cites the Supreme Court of Illinois as appearing to decide, in Schofield vs. Watkins, and in Merritt vs. Farriss, 22 Ill., 66 and 303, "that even in cases of intentional omissions the tax roll would not be invalidated,

but the parties injured would be left to their remedy against the assessor." (See Note 1, above referred to, at bottom of top p. 640.) He also cites, in the same connection, Dunham vs. Chicago, 55 Ill., 359. State vs. Maxwell, 27 La. Ann., 722. and New Orleans vs. Fourchy, 30 La. Ann., pt. 1, p. 910, and adds: "Compare Francis vs. Railroad Co., 19 Kan. 303." In the cases cited from the Illinois and Louisiana reports, the rule laid down seems to be in substantial harmony with that announced by the Supreme Court of Georgia in the case cited from 60 Ga., *Supra*.

This Court has, more than once, decided that the construction given by the Supreme Court of a State to a provision of its Constitution will govern in the Federal Courts. See State Railroad Tax Cases, 92 U. S., 575; also, 105 U. S., 667.

In this case, the omissions complained of, are probably attributable to the mistaken judgment of the Comptroller General. (See Judge Newman's opinion on p. 34, printed record.) But even if attributable to the unintentional error or judgment of the Legislature, the effect would be substantially the same.

If the Act, in discriminates not infringe the uniformity clause of the State Constitution, it would seem to follow that it is not obnoxious to the fourteenth amendment to the Constitution of the United States, which provides that "No State shall * * * deny to any person, within its jurisdiction, the equal protection of the law."

In this case, the Appellant is required by the Tax Act of 1886 to obtain a license and pay the amounts prescribed therefor, as a condition of thereafter entering the State to engage in business. The same license was required of all non-resident corporations, as well as all other companies—whether foreign or domestic—before they could lawfully conduct a business in the State belonging to the same classification. It is competent for the Legislature to exact such a license. See Philadelphia Fire Association vs. New York, 119 U. S., 110.

The fact that no such terms had been imposed in former years does not affect the power of the Legislature to exact such conditions for the future.

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